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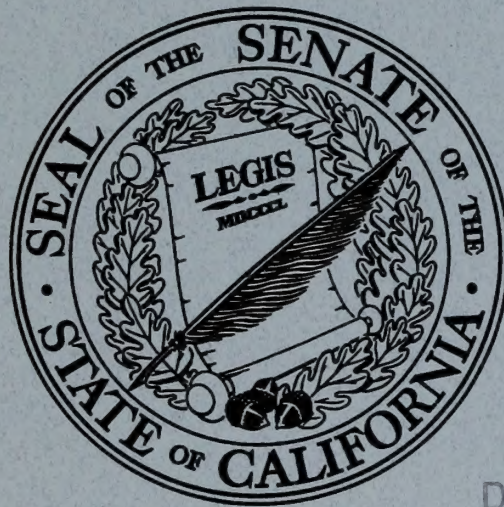
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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



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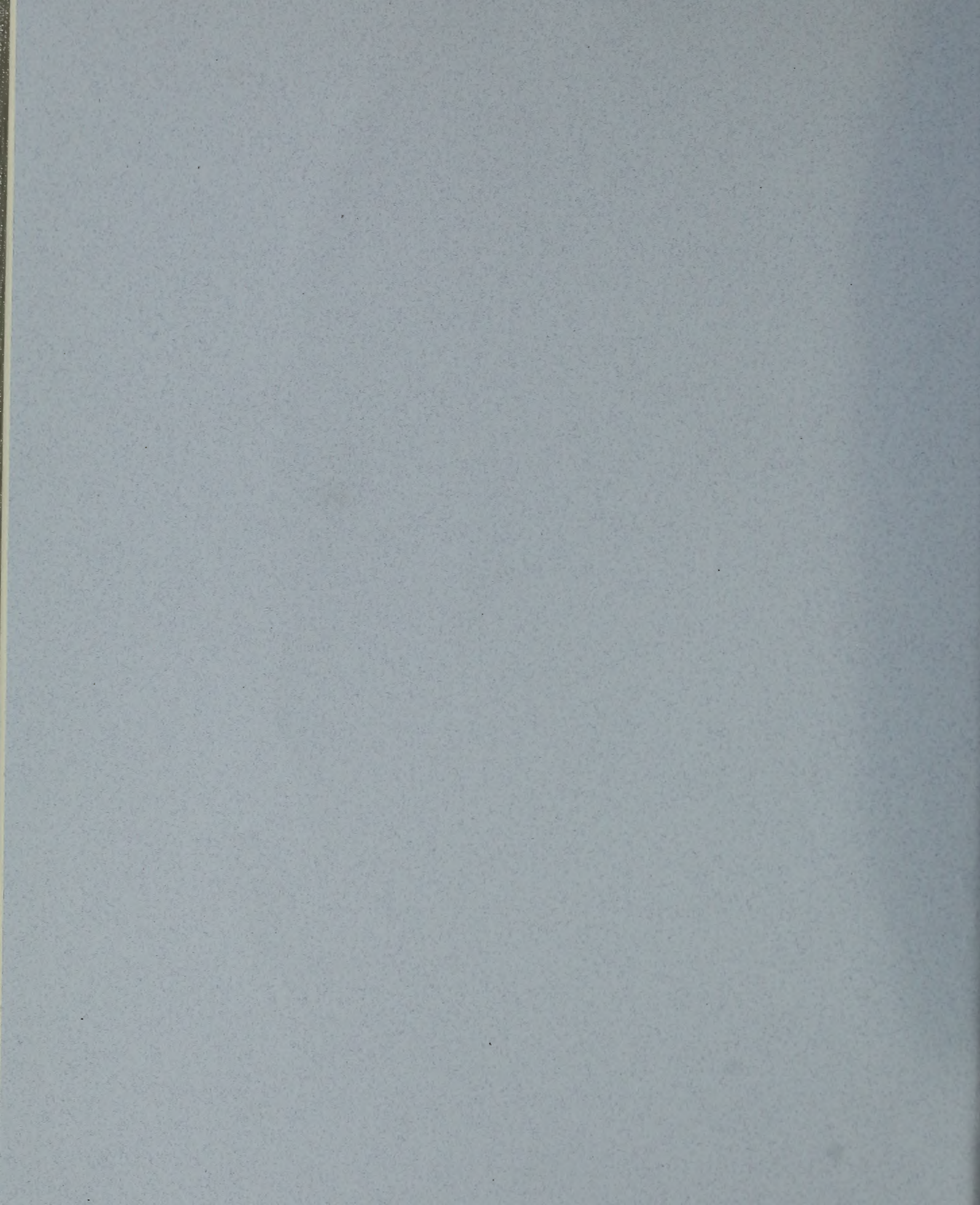
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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, May 24, 2006, 2006

1:31 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JAMES W. KELLOGG, Member
Fish and Game Commission

VIRGINIA HANDLEY
Animal Switchboard

KATHLEEN R. BRUGGER, Member
State Teachers' Retirement Board

SENATOR ROBERT DUTTON

LORI EASTERLING
California Teachers Association

ELIZABETH D. ROGERS, Member
State Teachers' Retirement Board

SENATOR ABEL MALDONADO

1 DAVID G. CRANE, Member
State Teachers' Retirement Board

2 DOLORES SANCHEZ
3 California Federation of Teachers

4 JENNIFER BAKER
5 Faculty Association of California Community Colleges

6 DAVE LOW
California School Employees Association

7
8 BEVERLY CARLSON
CTA/NEA Retired

9 DAVID WALRATH
10 California Retired Teachers Association

11 RUSTY SELIX
12 Association of Retired Teachers

13 SAL VILLASENOR
Association of California School Administrators

14 TERRY BRENNAND
15 SEIU State Council

16 PAT MORAN
17 Peace Officers Research Association
Professional Engineers in Government

18 DAVID HAWKINS
19 California Faculty Association

20 CHRISTY BOUMA
21 California Professional Firefighters

22 JOSHUA GOLKA
SEIU Local 1000

23 AFRACK VARGAS
24 California Firefighters Association

25 JEREMY SMITH
26 California Labor Federation

27 J.J. JELINCIC, President
28 California State Employees Association

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have a quorum.

I realize that we have a Senator here, but indulge me. I'd like to take Mr. Kellogg out of order. I know that you are in a little bit of back pain today, and I know what that's like, so come on up.

You're here today as a reappointment to Fish and Game.

MR. KELLOGG: Thank you, Senator.

I'm here after finishing up my first term on the Fish and Game Commission, and the last two years as President.

And I'm happy to be reappointed, and I hope I get confirmed so I can finish unfinished business.

CHAIRMAN PERATA: Speaking of which, why is it that there's so few wardens in the system now?

MR. KELLOGG: It's all about budget, Senator. I responded to your questions, and that was one of my comments, that it's a disaster, in my opinion.

But we don't -- the state doesn't pay them enough, and we don't have the budget to put more on.

And the good ones that we do get go somewhere else for more money.

I was in a meeting yesterday in Contra Costa County, and there was a young guy there that is an enforcement officer for the county building inspectors. He come up to me afterwards and said, "I used to be a game warden. They offered me more money here. I liked being a warden better, but I had to

1 feed my family."

2 CHAIRMAN PERATA: How many are we down from where
3 they should be?

4 MR. KELLOGG: We're under 300 now.

5 CHAIRMAN PERATA: Really.

6 MR. KELLOGG: In the '80s, we had over 800. And
7 our population's increased quite a bit. It's sad, very sad.

8 I would love to see us all together do something
9 about it. Every commissioner on the Commission is championing
10 their fight as well.

11 I believe all of you got a copy of the
12 publication they put out, telling the story. And it's pretty
13 devastating when people see it for the first time.

14 We will probably, as a group, come and visit all
15 of you and ask for your help.

16 CHAIRMAN PERATA: Okay.

17 Any further questions.

18 SENATOR ASHBURN: If you're just tempted to make
19 a suggestion since you're here, and the President of the Senate
20 is here, with the issue of budget and dollars in the budget for
21 game wardens, you might want to make that point.

22 MR. KELLOGG: It's part of our plan, yeah. If we
23 could get designated money out of the budget, I know it's a low
24 priority.

25 SENATOR ASHBURN: I think Senator Perata might be
26 able to help you with that.

27 CHAIRMAN PERATA: I would be happy to do that.

28 SENATOR ASHBURN: And on a bipartisan basis, we

1 probably could address that.

2 MR. KELLOGG: If I was really thinking, I'd have
3 insisted on being part of a big bonds deal.

4 [Laughter.]

5 CHAIRMAN PERATA: Next year.

6 If you guys like parks, you see, we could have
7 done a deal. But you didn't want those little woodchucks
8 running around everywhere, those messy little chucks.

9 Actually it's a good time to talk about this.
10 When you're feeling up to it, quickly come back.

11 MR. KELLOGG: Good. We'll do that.

12 CHAIRMAN PERATA: You have to make Battin's
13 motion. He's not here.

14 SENATOR ASHBURN: I would be pleased to make the
15 motion.

16 CHAIRMAN PERATA: Motion to approve.

17 Support or opposition? Family?

18 MS. HANDLEY: Family opposition?

19 [Laughter.]

20 CHAIRMAN PERATA: No, you're not family.
21 Virginia, you're not family.

22 MS. HANDLEY: Virginia Handley, Animal
23 Switchboard.

24 I think Mr. Kellogg would probably be
25 disappointed if I didn't come forward.

26 CHAIRMAN PERATA: He was asking about you
27 earlier.

28 MS. HANDLEY: And I understand that he will be

1 confirmed. And we do support all of his efforts to try to get
2 more wardens, and that is something that everybody does agree
3 on, though.

4 But I have been disappointed in a lot of his
5 votes, whether it covers endangered species, lead shot, robo
6 ducks.

7 It's my impression his chief interest on the
8 commission is to promote hunting and to increase it, whether
9 it's to increase trophy hunting or archery.

10 And while I can understand that, too, the
11 commission has such a broad amount of subjects that they have to
12 cover, and we would like to see more commissioners that can
13 cover more subjects and not just represent the consumptive use
14 of animals, whether it's hunting or commercial fishing. We'd
15 like to see a lot more protection of the resources and
16 protection of the animals.

17 The Albert Taucher Committee, which is their
18 advisory committee, I don't know why they don't an environmental
19 advisory committee. Albert Taucher, the purpose of that
20 committee is to increase hunting at every opportunity. Every
21 acre of land that the Fish and Game has any jurisdiction over,
22 they want hunting to be on it, even though that may not in the
23 best interest of the animals on it, possible endangered species.

24 They have to cover wildlife in captivity, which
25 is a broad subject and can be complicated. They cover the live
26 animal markets, which has been an interest for many years. We
27 hope the commission will be looking at that.

28 Wildlife rehabilitation regulations, that's come

1 before them, and that will be coming up at the next hearing,
2 too.

3 The fact that he's had tenure then I would
4 imagine he will probably be President again, which means they
5 determine what goes on the agenda, which is a very important
6 job.

7 So, we do hope, as we go into his next four
8 years, that we can see some more votes that reflect a broader
9 interest.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 Somebody already made your motion. No still
13 water here.

14 SENATOR ASHBURN: I made it flawlessly also.

15 CHAIRMAN PERATA: Yes, he did.

16 Anyone else in support or opposition?

17 Please call the roll.

18 SECRETARY WEBB: Ashburn.

19 SENATOR ASHBURN: Aye.

20 SECRETARY WEBB: Ashburn Aye. Bowen.

21 SENATOR BOWEN: I'm reading.

22 SECRETARY WEBB: Cedillo.

23 SENATOR CEDILLO: Aye.

24 SECRETARY WEBB: Cedillo Aye. Battin.

25 SENATOR BATTIN: Aye.

26 SECRETARY WEBB: Battin Aye. Perata.

27 CHAIRMAN PERATA: Aye.

28 SECRETARY WEBB: Perata Aye. Four to zero.

1 CHAIRMAN PERATA: Four-zero; congratulations.

2 MR. KELLOGG: Thank you.

3 CHAIRMAN PERATA: These are the three appointees
4 for the STRS Board. I'm going to ask Kathleen Brugger and
5 Elizabeth Rogers to come up first together. We'll leave Mr.
6 Crane all by himself.

7 So, Senator Dutton and Senator Maldonado. Isn't
8 that something. So good to see you on campus, Senator
9 Maldonado.

10 SENATOR DUTTON: Mr. President, Members of the
11 Rules Committee, it's my pleasure to introduce to you today
12 Kathy Brugger. She's from my district.

13 Kathy's had a very distinguished career in public
14 service, serving on the Ontario-Montclair School Board as well
15 as current service on the Board of Trustees of the Chaffey
16 College Board of Trustees.

17 Kathy is one of those rare individuals who has
18 the respect of both faculty as well as administrative as well as
19 constituents in the area. She's been reelected numerous times.
20 She's had a distinguished career that's been almost 28 years
21 with those two school governing bodies.

22 So, it's with great pleasure. She's also a local
23 business owner, and, I believe, has 10 grandchildren. So, she's
24 very much somebody who's an active member of our community. I
25 think she'd make an excellent addition to the board.

26 I believe she has support from a great number of
27 people.

28 CHAIRMAN PERATA: Thank you, Senator.

1 Senator Maldonado.

2 SENATOR MALDONADO: Thank you, Mr. Chairman and
3 Members.

4 I'm here today to give my strong support and my
5 strong endorsement for Beth Rogers, my friend and the friend of
6 a lot of people of the Central Coast.

7 I respectfully urge this Committee to recommend
8 confirmation of Beth's appointment as a public representative on
9 the STRS committee, the State Teachers Retirement Board.

10 Beth has strong local roots in California's
11 central coast. In fact, she's a fourth generation of her family
12 to live there and work there.

13 Beth is a farmer, Mr. Chairman, which is a good
14 thing, by the way. And she's an independent businesswoman.
15 Currently, she's a managing partner of Pacific Earth Resources,
16 a farming and horticulture business. She's also a former
17 president of the Davis Cablevision, which is located in Oxnard,
18 California.

19 Beth understands the role of government, having
20 served on state and local environmental boards. We know that.
21 And she knows how to make government services more responsive to
22 the communities and to the constituents she serves.

23 I think, just in closing, I want to touch a
24 little bit on Beth's background, her educational background,
25 which is very, very impressive.

26 While attending UCLA, Beth obtained a bachelor's
27 degree, a master's degree, and a Ph.D. in anthropology. No
28 content -- and not content with all the things --

[Laughter.]

SENATOR MALDONADO: Did I say "no content"?

MS. ROGERS: Yes.

SENATOR BOWEN: Known as the soft social sciences.

CHAIRMAN PERATA: You call that a light weight; right?

[Laughter.]

SENATOR MALDONADO: No, Mr. Chair. I said "no content" because I was thinking "UC," but anyways, Mr. Chair, she also obtained an MBA at UCLA. She attended the University of London, and also the Escuela Nacional de Anthropologia of Mexico.

So, I'm very, very impressed with Beth. She's done a fantastic job. And I can tell you that the people are going to benefit by having Beth on this board.

I would ask for a strong, full-board support for Beth Rogers, Mr. Chairman.

Thank you so much for this opportunity.

CHAIRMAN PERATA: Thank you.

You may go now.

[Laughter.]

SENATOR MALDONADO: I can go back to school.

[Laughter.]

CHAIRMAN PERATA: Really, you did fine.

I want to make a few opening comments, and this obviously would go for everybody here.

First of all, I am a teacher. I've had a job

1 before I started doing this one. I left the classroom in 1981.

2 But it's job that has not gotten any easier as
3 the years have gone on. It's a tough job, tough conditions. As
4 each year has gone on, we've expected our schools to take up
5 more and more of the slack that the rest of society the rest of
6 our social apparati have sort of collapsed around.

7 They don't make a lot of money, never will, and
8 we can talk all we want about what teachers should be paid, but
9 like everything else in that state, at least, we like to get
10 things as cheaply as we can. And we revere teachers, except
11 when it comes to paying them.

12 They don't participate in Social Security, which
13 is something most people don't know. And it's difficult for
14 people to answer that question when asked why not.

15 Half the teachers, more than half the teachers
16 who retire today will not get health benefits because those are
17 negotiated by districts. So, if you look at what teachers
18 retire at, and the rising cost of health benefits, they get
19 eaten alive.

20 So, we're sitting here right now as the
21 Legislature of the State of California, trying to solicit
22 100,000 teachers in the next 10 years as the replacement stock
23 for people like myself who, if they were teaching right now --
24 I'm exactly at the age when most teachers retire. And it's very
25 difficult to find acceptable candidates without giving them the
26 assurance of a public pension, and I'll tell you why.

27 Most teachers that I know, in spite of the old
28 adage that says, you know, "Those that can't, teach." I've

1 always loved that. "Those who can't teach, teach PE," and "Those
2 that can't teach PE used to be principals."

3 [Laughter.]

4 CHAIRMAN PERATA: That was the pecking order.

5 But the fact remains that one of the things that
6 attracts people to public service generally, and I think
7 teaching in particular, is that there is a stable pension
8 system, which you don't get in salary and bonus and stock
9 options, you get with a stable retirement. And that has always
10 been the case in public service.

11 And if you don't think so, just think about the
12 fights that have gone around, three at fifty, and public safety
13 retirement pensions.

14 So, this is a major consideration in public
15 employment. The days of the schoolmarms and the good nuns,
16 they're over. So, we're never get by on the cheap again.

17 Last year, unfortunately, and this is why I'm
18 somewhat exercised on the subject, we had a very bad early part
19 of the year where there was really a vitriolic debate that took
20 place about the appropriateness of public pensions. And I
21 thought it was cast with a broad brush. I thought it was a
22 condemnation of many people who serve, and as most condemnations
23 broadly applied, it was unfair.

24 It particularized itself in this Committee when
25 the Governor terminated some STRS Board members who thought they
26 were acting on their own fiduciary responsibility. That created
27 a condition that exists today, and you're going to inherit, or
28 have inherited, and that is that we have now politicized this

1 issue.

2 And I learned a long time ago, when I was in
3 local government and trying to attract businesses or retain
4 businesses, one of the things that I learned was investors want
5 a stable political environment. They want stability.

6 And to the degree that there's any instability at
7 all attached with this job, it is not going to give people what
8 they need to come into the profession.

9 I'm only asking you to take my word for it,
10 because you'd better, first of all.

11 And secondly, it is one of the few things that I
12 really know anything about.

13 This whole situation has made my Democratic
14 colleagues and, I'm sure, people of both stripes, very wary of
15 what we're doing here now. It is not something that before
16 would have become a very big issue. This was almost perfunctory
17 -- nice introduction, and, you know, bring your family. It used
18 to be a family show.

19 Now it's a little different. But what it boils
20 down to me, when you get away from all the chatter, and the
21 noise, and the posturing and all, it's really a fundamental
22 question, I think, that it boils down to.

23 That is, first of all, do you believe in a public
24 pension system? Do you believe in defined benefits? And do you
25 think it's your responsibility as a trustee or a fiduciary to
26 first and foremost act to protect the interests of those for
27 whom you're trustees? Those are the teachers in the retirement
28 system.

1 I think beyond that, it's all cocktail
2 conversation.

3 You're entitled to whatever ideological opinions
4 you hold.

5 You've got a degree in anthropology. I don't
6 think I've ever met anyone with a Ph.D. in anthropology before.

7 MS. ROGERS: I went back and got a business
8 degree.

9 CHAIRMAN PERATA: Yeah, because otherwise you'd
10 be a --

11 MS. ROGERS: It's really nice.

12 CHAIRMAN PERATA: All those things not
13 withstanding, I don't even bother to look at what your party
14 affiliation is. The only thing that really matters to me is
15 that. And if that's there, and that's taken as your primary
16 mission, and if you look at the Ed. Code, in Section 22250,
17 there's was passes as a mission statement, and that's
18 basically -- I just paraphrased what that is.

19 So, that's the only question I personally have,
20 is to affirm that. Or if you have "Yes, with an explanation,"
21 you know, I'd like to hear that as well.

22 But I have never felt, of all the appointees that
23 we've dealt with in the time that I've been Pro Tem, I've never
24 felt as strongly about a particular position and the role that
25 it's playing in a very major area of California's future than I
26 do right now about this particular position.

27 So, on one hand I'm grateful to you for being
28 willing to do this. And on the other hand, I want you to answer

1 that question: Are you in safe hands? Teachers have a right to
2 know.

3 In either order.

4 MS. BRUGGER: I believe that you have as part of
5 the backup a letter from the California Teachers Association, in
6 which they do state that they feel that I would represent them
7 in a fiduciary responsibility.

8 And that from that, yes, the defined benefit to
9 me is the right route to go.

10 However, as we all know, there's also a time --
11 we're looking at right now a matrix, a matrix of how are we
12 going to funds the unfunded liability.

13 So, I would welcome you all having a matrix, too,
14 so that we could get feedback because the ultimate decision will
15 be made by the Legislature. We are the pass-through, basically,
16 to you. And that's what we're trying to do, is to come up with
17 some ideas on that.

18 But as stated previously by Senator Dutton and by
19 the letters that you have, it is definitely felt that I would do
20 my fiduciary responsibility.

21 CHAIRMAN PERATA: I apologize; I mispronounced
22 your name. You're going to send those 10 grandkids after me.

23 MS. BRUGGER: Did you know I had to remember
24 Brugger from my husband by remembering hamburger?

25 [Laughter.]

26 CHAIRMAN PERATA: Did he know that?

27 MS. BRUGGER: Yes. After 38 years, you don't
28 have too many secrets.

1 CHAIRMAN PERATA: That's right.

2 Ms. Rogers.

3 MS. ROGERS: I did prove that I can take tests,
4 so I've seen a lot of teachers. I think that's about what my
5 educational resume indicates.

6 The answer is yes and yes. I don't think the
7 problem in Cal STRS -- I think we have to look at two buckets.
8 One is funding and one is structure. And while privy to a
9 briefing on what happened last year, obviously we weren't here,
10 and I don't think tinkering with structure does anything except
11 what you've suggested, which is create chaos.

12 I think a defined benefit is in place. It works
13 beautifully. I think an awful lot more people would like to be
14 a part of it. And I think the issue long-term will be funding.

15 As Kathy has mentioned, of course, we have no
16 authority over funding. But what we do serve as, I've come to
17 think of in my own mind, is an advisory board. We're like a
18 group you sent out to think about benefits, to talk to all the
19 groups, to take almost the staff time for you, to be immersed
20 with our own staff, with our board, with the various
21 constituencies to come up with a recommendation as to how we
22 think we keep full funding, and how we spread the burden of that
23 between various constituencies.

24 I think changing structure would just cause
25 chaos. I don't see any merit in it at all.

26 I think the real issue is going to be keeping the
27 salaries at a level where we can attract talent. And the
28 pensions, therefore, since they're derivative of the salary, 85

1 percent purchasing power, at a level that will attract new
2 talent.

3 I have to add one thing on the cocktail front. I
4 don't have any family members here today because my husband,
5 Richard Rogers, was confirmed by you, and stiffed me to go serve
6 the Fish and Game Commission this afternoon.

7 CHAIRMAN PERATA: He did?

8 MS. ROGERS: He did. He's out there working as a
9 commissioner.

10 CHAIRMAN PERATA: Did we confirm him on the
11 Floor, or is he still pending?

12 [Laughter.]

13 MS. ROGERS: You confirmed him.

14 CHAIRMAN PERATA: Because we can kick him out and
15 waste that sucker in a minute.

16 [Laughter.]

17 MS. ROGERS: Anyway, he's out doing his duty this
18 afternoon.

19 CHAIRMAN PERATA: We're going to get our money's
20 worth in this family.

21 MS. ROGERS: You are.

22 CHAIRMAN PERATA: Thank you.

23 Any questions?

24 Do you have family here?

25 MS. BRUGGER: No, I don't.

26 CHAIRMAN PERATA: After 38 years, who cares?

27 [Laughter.]

28 MS. BRUGGER: I know. My daughter has four

1 children. They're in school, and they're ages from 14 to 8.
2 And my other daughter is a teacher up in Oakhurst, and she has
3 three children. My son is working for his family, so he
4 couldn't be here ear, and he has three children. So, hello.

5 CHAIRMAN PERATA: They're probably all gathered
6 around is the Cal Channel right now, watching.

7 [Laughter.]

8 MS. BRUGGER: But they're all -- good wishes come
9 my way.

10 CHAIRMAN PERATA: You're going to have to make
11 another motion.

12 SENATOR ASHBURN: Motion.

13 SENATOR BOWEN: I do have one question.

14 CHAIRMAN PERATA: Senator Bowen.

15 SENATOR BOWEN: This is a follow-up to our last
16 confirmation hearing of Roger Kozberg. We had asked him to look
17 into a better way of helping public access STRS hearings. STRS
18 produces a summary of actions, not a transcript or a video.

19 And I don't believe that anything different has
20 been done, so I'd appreciate your follow-up on this.

21 And in particular, since you are building a new
22 building, I think it would be important to look at building in a
23 way that the public can have video access. It's always less
24 expensive to build that in when you're building than it is to
25 come back, rip out a bunch of dry wall, move a bunch of stuff,
26 and hire another contractor to run the cable that you could have
27 stuck in the wall while it was open.

28 So, not so much a question but a request, and I

1 think something that's important to all the Members of the Rules
2 Committee and to the public in general.

3 MS. BRUGGER: Thank you for your concern.

4 CHAIRMAN PERATA: Any support? Please come
5 forward.

6 MS. EASTERLING: Lori Easterling with the
7 California Teachers Association.

8 We do support Kathleen Brugger for this position.
9 We interviewed her, as well as the other STRS candidates, and we
10 found her to be not only fiduciarily responsible, but a
11 delightful person.

12 Thank you.

13 CHAIRMAN PERATA: That's always a bonus.

14 Any further support? Any opposition?

15 Seeing none, we have a motion for both
16 candidates. Please call the roll.

17 SECRETARY WEBB: Ashburn.

18 SENATOR ASHBURN: Aye.

19 SECRETARY WEBB: Ashburn Aye. Bowen.

20 SENATOR BOWEN: Aye.

21 SECRETARY WEBB: Bowen Aye. Cedillo.

22 SENATOR CEDILLO: Aye.

23 SECRETARY WEBB: Cedillo Aye. Perata.

24 CHAIRMAN PERATA: Aye.

25 SECRETARY WEBB: Perata Aye. Four to zero.

26 CHAIRMAN PERATA: Four-zero, congratulations.

27 MS. BRUGGER: Thank you.

28 MS. ROGERS: Thank you.

1 CHAIRMAN PERATA: Mr. Crane, do you want to come
2 up.

3 It's always good to have Mr. Costigan here.

4 MR. CRANE: Yes, at least I have some family.

5 [Laughter.]

6 MR. CRANE: I have copies of my statement. Shall
7 I pass them out?

8 CHAIRMAN PERATA: Yes, just give them to the
9 sergeant behind you. A prepared statement.

10 MR. CRANE: May I?

11 CHAIRMAN PERATA: Absolutely.

12 MR. CRANE: Good afternoon, Mr. Pro Tem and
13 Members of the Senate Rules Committee.

14 Thank you for allowing me to appear before you
15 today and to outline why I believe I am qualified for a position
16 on the STRS Board.

17 I'm honored to be here, and I've been honored to
18 serve on STRS' Board since last July.

19 With a background in financial services and
20 investments, and a life-long interest in public affairs, I love
21 the issues we discuss at STRS and consider those issues to be of
22 great importance to our state and its future.

23 My family couldn't be with me today, so for your
24 pleasure and my support, I've brought their photographs. Feel
25 free to glance at them before throwing any unusually tough
26 questions my way.

27 [Laughter.]

28 CHAIRMAN PERATA: Turn that to Senator Cedillo,

1 please.

2 [Laughter.]

3 MR. CRANE: I may need to move it around, I
4 think.

5 By way of background, I'm a Colorado native, and
6 University of Michigan graduate who moved to San Francisco --

7 SENATOR BOWEN: That's one strike.

8 [Laughter.]

9 MR. CRANE: Which one, Colorado or Michigan?

10 SENATOR BOWEN: Michigan.

11 MR. CRANE: Who moved to San Francisco in 1977 to
12 attend UC Hastings College of the Law, from where I graduated in
13 1980.

14 During my third year of law school, I started
15 part-time work at the princely pay of five dollars per hour for
16 a new firm called Babcock & Brown with one office and four
17 employees. After law school, and much to my mother's distress
18 that I wasn't joining a law firm, I stayed with B&B, and over
19 the next 25 years, helped grow the firm into a multi-national
20 enterprise, with 19 offices around the world, that employed more
21 than 400 people, and that had arranged more than \$250 billion of
22 financings.

23 After 25 years, I decided to make 2003 my last
24 year and venture off into the then-unknown -- into then-unknown
25 public service endeavors. To my good fortune, Governor
26 Schwarzenegger decided to run for office that summer and asked
27 me, an old friend, to assist in formulating his economic
28 platform, an invitation I joyfully and readily accepted. After

1 the election, he asked me to stay as his special advisor for
2 jobs and economic growth.

3 During my tenure on the STRS Board, my highest
4 priority has been to help STRS grow its capital at the highest
5 risk-adjusted rate and lowest administrative cost. To meet its
6 obligations without unscheduled draws on the state, STRS must
7 not only overcome its current unfunded liability, but also must
8 compound its nearly \$150 billion of capital at 8 percent net per
9 annum for years to come, not an easy task for a massive fund
10 operating in the low-yield world that's flush with capital
11 streaming across borders with increasing ease.

12 I've been extremely impressed with STRS's
13 investment staff, led by Chris Ailman, and I continue to see the
14 board's number one task as giving Chris the tools he needs to
15 meet that task.

16 Another top priority should be succession
17 planning. A number of STRS's most senior executives qualify, or
18 will soon qualify, for retirement, so we must be sure that we
19 have the personnel in place to carry on STRS's mission without
20 interruption to the investment process or to its 750,000
21 members.

22 I'd like to address concerns expressed about my
23 candidacy. One concern expressed about me is that I might not
24 be independent since I am on the Governor's staff.

25 First, let me tell you that anyone who knows me
26 knows that I am independent to a fault. For better or worse, I
27 do my own analysis and I make my own judgments. And the fact
28 that I -- an advisory trustee of Environmental Defense, a former

1 trustee of Legal Services for Children, and long-time Democrat
2 who worked for, among others, Gary Hart, Bruce Babbitt, the late
3 Paul Tsongas, Tim Wirth, and Bill Bradley -- chose to work for a
4 Republican Governor should give you some additional insight into
5 my independence.

6 However, after my discussion with Senator Perata
7 yesterday, and his suggestion that I choose between the two
8 assignments, I discussed the matter with the Governor, and I
9 have decided that, if confirmed by the Senate, I will resign my
10 position as special advisor to the Governor for jobs and
11 economic growth.

12 Another concern about my candidacy arises from a
13 fear that I will try to use STRS as a platform in which to move
14 California's public pensions from defined benefits to defined
15 contributions.

16 That isn't the case, and that will never be the
17 case with me as a STRS fiduciary. Every issue that comes before
18 us may be considered only in the context of our roles as honest
19 as independent fiduciaries.

20 But that doesn't mean we board members won't
21 disagree from time to time about appropriate courses of action
22 consistent with those roles as fiduciaries. For example, in our
23 discussions about how best to narrow STRS's unfunded liability,
24 I've been in the minority when opposing cuts in benefits for
25 future teachers, and I have not yet been joined by other board
26 members in calling for an end to the practice of STRS board
27 members being permitted to accept contributions from money
28 managers and others to whom STRS awards business.

1 Likewise, I was in the minority in opposing: an
2 actuarial report which I viewed as based on overly optimistic
3 earnings assumptions; a new headquarters building, which I
4 viewed as overly expensive; and a real estate investment that I
5 viewed as overly rich for the promoter and environmentally
6 unsustainable.

7 But in most cases I have been with the majority,
8 and two central points all board members tend to agree upon is
9 that everyone is better off if STRS earns the highest return at
10 the lowest risk, and provides excellent service to members.

11 But what has worried those concerned that I might
12 use STRS to advocate for a different pension system, more than
13 anything else, was my vote in favor of STRS staying neutral on
14 Assemblyman Richman's bill, ACA 23. For the record, my vote in
15 that was based solely and entirely on my view of my fiduciary
16 obligations as a STRS board member.

17 During orientation, new board members learn the
18 facts and principles required for governing STRS, including:
19 that STRS should remain neutral on legislation that cannot
20 negatively affect its members; that STRS gets the cash with
21 which to pay benefits from a combination of investment earnings,
22 member contributions, employer contributions, and state
23 contributions; and that because requirement benefits are
24 guaranteed by contract, the state's contribution will be in
25 amounts needed to ensure benefits -- that benefits are paid when
26 due.

27 Looked at that way, STRS is much like a garden
28 watering system that draws water from both a rain catchment

1 system and a municipal water system, so that the gardener knows
2 there will always be water pressure when he or she turns on the
3 sprinklers.

4 And this explains why STRS has been able to
5 operate with an unfunded liability in 27 of the last 30 years
6 without any impact on benefits.

7 Accordingly, in my judgment, ACA 23 could not
8 affect STRS's members because if you, the Legislature, decide to
9 adopt that plan, and such an adoption leads to a reduction in
10 either member contributions or investment earnings, state
11 government contributions would increase, so the benefits would
12 proceed in an uninterrupted fashion.

13 In addition, I felt that the opinion of counsel
14 was unpersuasive and of illusory value, since it was a "could"
15 opinion, and therefore did not reach the level of either a
16 "will," "should," or even "more likely than not" opinion
17 standard. In my more than 25 years in business and investing
18 experience, I have never witnessed a "could" opinion being
19 utilized or accepted by parties to any agreement, transaction,
20 vote, or investment.

21 Also, I believed any potential reduction in
22 investment earnings arising from shortening of the portfolio,
23 one of the outcomes predicted by the actuary assuming a
24 noninverted yield curve, could be offset at least in part by a
25 reduced allocation to our fixed income portfolio, a step I have
26 advocated we should take anyway.

27 Thus, I voted in favor of STRS remaining neutral
28 on ACA 23. Though I was in the minority in taking that position

1 and continue to believe STRS should have stayed neutral on that
2 legislation, I still view our discussion as a good and healthy
3 example of reasonable and independent minds differing on
4 occasion.

5 If confirmed, you can count on me to consider
6 matters solely in a fiduciary context, to be independent, to
7 push for honest and relevant information, and to remain focused
8 on generating the highest risk-adjusted returns at the lowest
9 administrative expense.

10 One last comment. Though I know criticism can
11 and should come with this territory, one invalid criticism that
12 has personally stung me is the one suggesting that some of my
13 positions demonstrate a lack of support for teachers. I want
14 you to know that's resolutely not the case.

15 I think teaching is probably more important for
16 California's future than virtually any other profession. And I
17 believe that it's very much in all of our interests to create
18 environments, including compensation environments, that attract
19 and retain the best and brightest to the teaching profession.

20 Moreover, such a criticism of me is painfully
21 ironic in light of my lonely position on the board in opposing
22 proposals to narrow our unfunded liability by cutting future
23 teacher benefits or imposing longer amortization periods. At a
24 time when recruiting new teachers and providing top quality
25 education is chief among the state's priorities, I believe the
26 last thing we should do is burden future teachers and future
27 generations with the consequences of our failure to address our
28 own generation's deficits.

1 I will be honored if confirmed. Thank you again
2 for allowing me to appear today.

3 CHAIRMAN PERATA: Thank you.

4 Could I just ask you to respond to my question
5 that I applied to the other two in terms of the fundamental duty
6 of a member of the STRS board?

7 MR. CRANE: It's -- the fundamental
8 responsibility is to protect the system and the members.

9 CHAIRMAN PERATA: I couldn't quite parse this
10 out, so you support defined benefits for public employees?

11 MR. CRANE: Well, defined benefits are up to you.
12 Whether a compensation program for employees is high salaries
13 and defined contribution, or whether or not it's lower salaries
14 and defined benefit is up to you.

15 My view is that the Legislature should determine
16 what compensation packages will allow us to recruit the teachers
17 we need to replace the teachers who are leaving.

18 And I agree with you, that it's one of the major
19 issues facing the state.

20 What that compensation package should be, should
21 be up to you. Whatever package it is, I will faithfully execute
22 my responsibilities as a fiduciary on this board.

23 CHAIRMAN PERATA: Senator Bowen.

24 SENATOR BOWEN: Actually, the compensation
25 package is not up to us. It's up to local school districts. We
26 don't set the compensation for teachers.

27 MR. CRANE: Well, you did with the benefits in
28 1998 and 2000 by legislation.

1 SENATOR BOWEN: But the negotiations generally
2 for benefit levels, for things like whether there's health care
3 coverage after retirement, and so on, we don't have a statewide
4 bargaining unit for teachers.

5 MR. CRANE: Correct. That's my understanding,
6 right.

7 SENATOR BOWEN: First let me say that my joke
8 about "one strike" really is a joke.

9 I did attend Michigan State, though, you should
10 know.

11 For those of you who are not from Michigan, this
12 is USC-UCLA sort of a thing.

13 MR. CRANE: I forgive you.

14 SENATOR BOWEN: I taught at Michigan last year, a
15 class, so "Go Blue."

16 I attempted to follow the conversation about the
17 status of the unfunded liability, and whether or not a defined
18 benefit or defined contribution plan would have an effect.

19 And as I understood it, your argument that it is
20 of no relevance to you because the state taxpayers will always
21 step in to make up the difference really strikes me as being at
22 odds with the way that you have conducted the rest of your
23 professional life, as I understand it, in which you've been very
24 much a big-picture-person.

25 I don't understand from you, in particular, the
26 view that a system that increases the unfunded liability is of
27 no concern to the teachers who ultimately will depend on the
28 system for their retirement insofar as it has potential to

1 significantly increase the state's deficit or require increased
2 taxes.

3 MR. CRANE: Well, I do agree with you that the
4 number one concern for teachers who have an obligation -- who
5 are owed retirement money, the number one concern they should
6 have is the state's credit rating. So, I completely agree with
7 you.

8 At the end of the day, their protection comes --
9 they in a sense have built-in suspenders. Their protection for
10 their retirement benefits comes from, they have access to both
11 the assets at STRS as well as the state guarantee. So, at the
12 end of the day, the state guarantee is what supports everything
13 for them.

14 Let's say tomorrow Chris should make some
15 investments that are absolutely ridiculous, which isn't going to
16 happen, but let's say he did. And the fund would lose
17 everything. They would still be okay because they have the
18 state guarantee. So, they should always be pleased if the state
19 has a strong guarantee.

20 I don't know if that is responsive to the
21 question.

22 SENATOR BOWEN: Is there no point at which a
23 combination of higher benefits for current teachers, and greater
24 benefits for teachers who are retiring, and poor investments
25 would, in your view, jeopardize the financial health of the
26 fund?

27 MR. CRANE: Well, only if the state's credit
28 rating should decline, because, again, the state guarantees the

1 benefits. If you will, STRS is funded from four buckets at all
2 times, like that water pressure system I mentioned. You have:
3 investment earnings which are volatile, and you've seen what
4 they've done over the last five years; you have member
5 contributions; you have the employer contributions; and you have
6 the state contribution. The state's always going to make sure
7 that the benefits are paid.

8 So, it's always better -- it's always better --
9 if they have more money coming in from all four of those
10 sources, because you want the greatest potential coverage, but
11 they will be protected by the state's guarantee, unless, of
12 course, the state were to be bankrupt.

13 SENATOR BOWEN: I don't think it takes bankruptcy
14 before there's an issue. We certainly have seen in other
15 contexts bargaining down or freezes on COLAs for other public
16 employees.

17 Again, I just don't understand the view that
18 there should be no concern about the level of benefits because
19 the state's always going to guarantee it. And that's how I
20 understand your argument. No matter what happens in any of the
21 other three buckets, since the state's ultimately going to step
22 in and fill the well to the level that's specified, the trustees
23 shouldn't worry about it.

24 That's not your view?

25 MR. CRANE: Well, I think the issue -- I'm not so
26 sure I understand the question -- but I think that the issue --
27 the ACA -- if you're talking about ACA 23, the issue there was,
28 would passage of ACA 23, which would be up to you, by the way.

1 The Legislature would determine whether or not you pass it. So,
2 you would be determining whether or not any of this were to
3 happen in the first place.

4 The question there is, what would happen to one
5 of the buckets or two of the buckets supplying funds to STRS?
6 Two of those buckets could be affected; one of them for sure,
7 member contributions would decline. The other one, investment
8 earnings, the actuary suggested that they might -- that they
9 would decline, which is, in my view, probably not correct. But
10 even if you can assume, if you want, that they will, in my view
11 what happens in that case is, the other bucket, which is the
12 state contribution, simply has to go up. And that is, by the
13 way, the most secure bucket.

14 So, if you look at it from the teachers'
15 standpoint, if they look at the four sources of funds which
16 provide their retirement benefits, the secure is the
17 state-provided piece. So, from a volatility standpoint and a
18 risk standpoint, that's the one that's safest for them anyway.

19 So there's -- passage of ACA 23 in and of itself
20 would not affect the ability of the teachers to get their
21 benefits.

22 SENATOR BOWEN: I am also struggling with your
23 interpretation of your No vote to the motion to oppose ACA 23.
24 You cast it in your statement as a vote for Cal STRS to remain
25 neutral. But that wasn't the question that was posed by the
26 motion, as I understand it.

27 The question was, shall Cal STRS take a position
28 of opposition; not shall we remain neutral.

1 MR. CRANE: Right, but the only vote -- the
2 motion was exactly as you described, so the only vote that one
3 could give is Yes or No or Abstain. And I voted No because I
4 did not think that STRS should oppose the legislation.

5 If there had been a motion, should STRS remain
6 neutral on this legislation, I would have voted Yes.

7 SENATOR BOWEN: Can you offer a substitute motion
8 in the STRS world?

9 MR. CRANE: Should STRS remain neutral on the
10 legislation.

11 SENATOR BOWEN: I mean, if your view is we should
12 remain neutral, why not make that a substitute motion?

13 MR. CRANE: At the board meeting I said that STRS
14 should remain neutral on it.

15 Had I made the motion, by the way, Senator, I
16 don't think anybody would have seconded it. I was distinctly in
17 the minority in my vote.

18 SENATOR BOWEN: Let me explore for a moment the
19 limits of where you think STRS should and should not take
20 positions on legislation, because it sounds like from the
21 comments that you've made and the comments on the state's
22 ultimate funding source that there's almost no instance in which
23 you think it would be appropriate for the STRS board to take a
24 position on legislation?

25 MR. CRANE: In general, I think that the
26 Legislature should -- unless there's going to be a negative
27 impact on our members, that we should not take a position on
28 legislation. I think that it should be your prerogative to

1 determine what legislation passes without undue influence from
2 third parties if we don't have a dog in that hunt.

3 SENATOR BOWEN: Again, I don't understand how, if
4 the fund is worse off financially, that that isn't detrimental
5 to members who are receiving benefits.

6 I certainly would rather receive a benefit from a
7 healthier fund, fiscally healthier fund than one that is
8 counting on revenues from the state, which are also very
9 volatile. We've had to suspend pension contributions in the
10 past. I didn't vote to do that, but many did because there
11 weren't many options that year.

12 So, I don't understand how you can argue that
13 it's irrelevant to the comfort level of a teacher who's going to
14 be receiving benefits from STRS whether the unfunded liability
15 is two dollars or two billion dollars?

16 MR. CRANE: Well, STRS has operated with an
17 unfunded liability for 27 of the last 30 years. It got down to
18 funded levels as low as 26 percent. I have the schedule, if
19 you'd like to see it.

20 So, if teachers are going to be concerned, even
21 though they have guaranteed contracts, by inadequate funding in
22 place at STRS, then they should be less concerned this year than
23 in most of the 27 out of the last 30 years, because most of
24 those years the unfunded liability has been even greater.

25 I think there were three years when STRS was
26 excessively funded: 1998, 1999, and 2000.

27 So, I think your question was, how should a
28 teacher feel if there's an unfunded liability? Maybe I'm

1 financial to a fault. They have a guaranteed contract from the
2 state, so they'd feel -- like I said before, it's like wearing
3 belts and suspenders -- it would be like wearing belts and
4 suspenders if you could have 100 percent funding plus the
5 guarantee.

6 But I don't think they're in a position to feel
7 secure. In fact, one of the positions I took early on when
8 there were a lot of pension blowups at private companies, as you
9 know, a lot of private companies -- a lot of employees at
10 private companies with defined plans have suffered losses, and
11 there were concerns expressed at some of our earlier meetings
12 that some of our members were worried that they fell into the
13 same boat.

14 My position was that we should communicate very
15 strongly and often with them that they are not in the same boat,
16 because I don't think there would be anything worse than for a
17 retiree to think that their retirement income is stressed, or
18 under attack, or unavailable.

19 So, I agree with you about that, but the facts
20 are, they should not feel that way.

21 SENATOR BOWEN: Let's go directly, that leads us
22 directly into a discussion about defined benefit versus defined
23 contribution plans, because I think for many members, the idea
24 of moving to a defined contribution plan certainly does make
25 them feel stressed about the level of their retirement
26 benefits.

27 Earlier in the year, you were quoted in a
28 newspaper as saying that defined pensions are, quote, "nonmarket

1 deals and special privileges."

2 Can you please explain what you meant by those
3 statements?

4 MR. CRANE: Sure. Defined benefit plans are very
5 much in the minority in the marketplace. They don't exist very
6 much any more. And so, the existence of them is, indeed,
7 nonmarket, and it is quite the special privilege. I don't know
8 anybody who would not like to have a defined benefit plan.
9 They're wonderful. And they provide -- especially when you have
10 the guarantee of the State of California -- enormous security.

11 So, I can see why -- and I think this is what
12 underlies everybody's concern about me. They think that I want
13 defined benefit plans to go away.

14 I don't want that. I want you to decide what you
15 want to do with respect to defined benefit and defined
16 contribution plans, or any other plan, without undue influence
17 from people whose interests are not hurt by that.

18 Our members cannot be hurt by your decision in
19 that regard. Future teachers --

20 SENATOR BOWEN: So, you view yourself as having
21 no responsibility at all to future teachers in terms of their
22 benefits?

23 MR. CRANE: Actually, I can't represent them as a
24 fiduciary. I can't as a fiduciary. I must only represent our
25 current members.

26 But as I pointed out in my remarks, I am the only
27 board member, I believe, of the 12 of us, who in the discussions
28 about reducing the unfunded liability and the steps to

1 accomplish that, I'm the only one who has voted against
2 proposals to cut future teacher benefits, which are on the table
3 and are brought up at every meeting.

4 And I cannot -- and I get stung by it, to take
5 people who are innocent third parties, who have nothing to do
6 with the current deficit, and say because we have to close the
7 deficit, which relates to the current generation, we're going to
8 cut your future benefits. And I think it argues against
9 everything that I think you all want as well in the sense that
10 you want a world in which you can attract the 100,000 teachers
11 that we need.

12 So, but as a defined benefit versus defined
13 contribution, I think defined benefit -- personally, I think
14 it's an enormous attraction tool.

15 New Jersey underwent recently a broad review of
16 this whole process and reached the same conclusion, that with
17 public employees, there's an out-sized benefit to being able to
18 offer a defined benefit plan.

19 So, if it works, great, and it should be up to
20 you.

21 I will point out to you that teachers on the
22 board, one of our -- one of my favorite board members said, he's
23 a long-time teacher, said he doesn't think that teachers who are
24 joining now think about retirement plans. They don't really
25 care about the defined benefit plans. But if it were me, I even
26 thought about it when I started my job.

27 SENATOR BOWEN: Believe me, I thought about it
28 when I started this job. Do you know what my benefit is? Zero.

1 MR. CRANE: We had one in my company, and I
2 really thought about it.

3 But I think he was telling me most people don't.

4 So, it's a longer answer than maybe you wanted,
5 it's an extraordinary marketing tool.

6 SENATOR BOWEN: I think the reason I get into
7 this is that there, in that situation, you're looking at the
8 interests outside the four squares of what you've talked about,
9 which are the way that the deficit is funded. And you're
10 looking at the impact on future teachers and whether benefits --
11 and then, in the same breath, you're saying, "But we shouldn't
12 look at the possibility that the state guarantee could provide a
13 difficulty, that there could ever be problems with the state."

14 If the deficit's big enough, if it coincides with
15 the recession, if the Google effect goes away, and various other
16 things happen at the same time, that we actually could be in a
17 difficult spot as a state.

18 I just find it a very head-in-the-sand approach
19 from someone whom I think is generally pretty realistic about
20 financing.

21 MR. CRANE: Actually, it's a very financial view
22 I have.

23 The obligation the state has is a contractual
24 obligation, no different than the obligation it has to repay
25 debt that the state has issued. The state has a credit rating
26 which reflects that.

27 So, the people who lend money to the state are in
28 the same position as the people you owe money to under these

1 contracts. They should feel in the same position as those
2 people. They accorded an A-plus rating.

3 So, I disagree with you. I don't think people
4 should -- they should feel insecure unless the state has --
5 unless, you know, as we had when the Governor took office, we
6 had these enormous deficits, there was worry. And you saw what
7 happened in the state's credit rating in that case.

8 SENATOR BOWEN: We still have a structural
9 deficit.

10 MR. CRANE: And that is why --

11 SENATOR BOWEN: We're going to have money this
12 year because of the Google effect, or whatever, but we still
13 have a structural deficit. We still are collecting less revenue
14 on an annual basis than our ongoing expenditures.

15 MR. CRANE: Right. And despite that, you have an
16 increase in credit ratings. So, from the employees' standpoint,
17 I think that's what they should be looking at, is the state's
18 credit rating in that case.

19 SENATOR BOWEN: Well, I guess I have still on my
20 refrigerator from a couple of years ago a cartoon from the
21 Sacramento Bee that had the State Flower, the State Dirt -- yes,
22 we have a State Dirt.

23 MR. CRANE: Statewide dirt? Dare I ask?

24 SENATOR BOWEN: I can't remember -- the State
25 Soil, the State Bird, and then the last frame of these six is
26 the State Credit Rating, and it's a picture of a toilet.

27 And that, combined with my experience in a couple
28 of instances, one as a young lawyer working on what was a

1 pension plan of a Fortune 500 hundred, where people were
2 guaranteed a pension. It was part of their bargaining contract,
3 and yet when the company got into financial trouble, it chose to
4 amend the plan to the ERISA minimum to create an actuarial
5 surplus, which the company took back after terminating the plan.

6 What happened was, the employees sued.
7 Eventually, a couple of years later, they won a favorable
8 judgment, and the company had to refund, literally, the plan.

9 MR. CRANE: Good.

10 SENATOR BOWEN: Which was appropriate, but you
11 put them in a situation where they had risk, and where they had
12 to incur litigation expenses.

13 I have also watched most recently employees of
14 World Comm, Enron, Global Crossing, and many others who thought
15 they had secure pensions.

16 So again yes, it's a contract, but the state has
17 on more than one occasion been sued for breach of contract. I'm
18 sure if you were the Governor, that never would have happened.

19 Again, what does security mean if it's only
20 secure from a legal standpoint but the financial underpinnings
21 of it, the fact that there's a structural deficit, doesn't that
22 mean something to you in terms of looking at the financial well
23 being?

24 MR. CRANE: Yes, that's why I think for the
25 benefit of public employees, the best thing the Legislature, the
26 best thing elected officials, others, can do is to have the
27 strongest possible credit rating.

28 SENATOR BOWEN: So, do you have a view on whether

1 or not a defined benefit or a defined pension plan is best for
2 teachers?

3 MR. CRANE: Well, as I said before, I think
4 they're the most -- they're an unbelievably attractive tool.
5 They are very attractive. And so, I think if it's the best tool
6 to be employed in obtaining the teachers that the state needs,
7 and the dedicated teachers the state needs, especially in this
8 knowledge-based world where increasingly we're dependent upon
9 higher quality education, if that's the tool that the people who
10 recruit the teachers and hire the teachers think is the best
11 tool, then that's the tool that you should allow them to have.

12 I'm agnostic on the issue. I think that they're
13 great marketing tools. But, for example, let's say that you
14 could find the best teacher that you wanted for a particular
15 area, and that teacher said, "I don't want this defined benefit
16 plan. I want a higher salary." Let's say you'll offer him
17 \$50,000 a year and a defined benefit plan, \$70,000 a year and
18 not a defined benefit plan, that person might want the defined
19 contribution plan. I don't know.

20 So, I'm agnostic. I really think it's up to the
21 recruiters.

22 I'm comfortable with whatever decision they make
23 in that regard. As I mentioned, New Jersey made that decision.

24 SENATOR BOWEN: My concern is that you get a
25 defined contribution plan and the low salary.

26 MR. CRANE: Then you wouldn't --

27 SENATOR BOWEN: And still no health benefits
28 after you retire.

1 MR. CRANE: I think the lack of health benefits,
2 this is just an aside, is one of the major issues in discussing
3 with teachers, one of the major issues affecting them, and would
4 be something where it would be wonderful to come up with a
5 statewide solution.

6 SENATOR BOWEN: There's one more question I want
7 to explore on the question of defined contribution versus
8 defined benefits before I call an end to the beating of this
9 particular horse. Although, others may choose to take it up; I
10 don't know.

11 One of the things that's concerned me about this
12 proposal -- and I'm not agnostic on it -- in large measure as a
13 result of, again, a real world consequence and reality in the
14 Teachers Retirement System, 70 percent of active members of STRS
15 are female.

16 Women, owing to our genetic dispositions,
17 superior health habits, the fact that we walk around the Capitol
18 more, smoke less, et cetera --

19 MR. CRANE: Live longer.

20 SENATOR BOWEN: We live longer on average. And
21 what that means is that if you move to a defined contribution
22 plan, and you assume all other things equal, which they are not,
23 given that we still have women move in and out of employment to
24 be caregivers, primarily of parents, more than men do, so they
25 have fewer years of service in general, but even if you assume
26 that a man and a woman each had an identical number of years of
27 service at exactly the same salary, you still would be in a
28 situation on retirement where the same amount of defined

1 contribution money would have to last the longer life span.

2 STRS actually was kind enough to write me a
3 letter after I requested information on this over a year ago.
4 This is February of last year when I was raising this issue.
5 And it would cost \$654,000 for a male to purchase an annuity
6 with a particular benefit level, and \$700,000 for a woman to
7 purchase the same annuity.

8 How do you deal with that as a fiduciary, or do
9 you view that as outside your role as a fiduciary?

10 MR. CRANE: Well, first of all, it's an
11 interesting fact. Women live longer than men, and teachers live
12 longer than most people. It's another thing I learned since
13 joining the STRS board. So, it's an issue that applies --

14 SENATOR BOWEN: I'm sure the Pro Tem is happy to
15 hear that.

16 [Laughter.]

17 MR. CRANE: It applies to teachers generally,
18 this issue of living longer. And therefore, if you -- because
19 the decision is up to you, not to me, because these issues about
20 whether or not the state goes to a different sort benefit plan
21 is up to you.

22 I think that's something you should take into
23 consideration.

24 SENATOR BOWEN: Is it your role as a trustee to
25 say 70 percent of the people who are in the system of which I am
26 a trustee would be disadvantaged by this?

27 MR. CRANE: No, they wouldn't be, because they're
28 protected no matter what. You couldn't change their current

1 contract without their consent. The members that exist today
2 are under a contract, and they're entitled to their benefits.

3 If you go forward with a new plan, you'll be
4 affecting people who are not yet our members. And whatever you
5 decide to do, trustees have to comply with their fiduciary
6 obligation.

7 SENATOR BOWEN: But you don't view it as your
8 role to even raise the issue for future retirees?

9 MR. CRANE: Well, I think what my role is, I
10 raise -- the issues I raised, for example, not wanting to cut
11 future teacher benefits. So, future teachers are not yet
12 members, so I'm not representing them when I say that.

13 But I believe it's important any time that we
14 look at taking a step to solve our problem of the unfunded
15 liability, we not do something to gore somebody else's ox,
16 unless they're at the table to argue for themselves.

17 So, I'm comfortable in a case like that saying we
18 should not cut future teacher benefits in order to solve our
19 problem.

20 The question you're asking me is, should a STRS
21 board member take a position on what sort of benefit plan you,
22 in the Legislature, should craft for future members. Since that
23 won't -- since I'm not the one solving our problems, I don't
24 have to do that.

25 SENATOR BOWEN: Why are you assuming that current
26 members could never be affected?

27 If we chose, if the electorate chose to change
28 from a defined benefit to a defined contribution tomorrow, all

1 of the benefits to today would be protected. But starting
2 tomorrow, people would have, who are currently members, could
3 have a benefit in which part of their plan is based on the old
4 system, and part based on the new system.

5 MR. CRANE: No. STRS General Counsel has said
6 those who are vested would get the rights that they're entitled
7 to under the preexisting law.

8 SENATOR BOWEN: They're vested as to what they've
9 earned as it is, but they have no right going forward to have
10 the law continue as it is.

11 MR. CRANE: No. In other words, somebody who's --
12 like, let's say somebody's worked there for 15 years. I think
13 they vest after five -- I can't remember -- but they vest at a
14 certain point. They've been there for 15 years, and they're
15 entitled to a defined benefit plan, which entitles them to
16 certain scheduled payments at certain points in their lives;
17 right? That's a contract.

18 Then let's say you pass a law saying, we're going
19 to a new plan. That person doesn't lose the right to get those
20 same scheduled benefits in the future. They haven't lost
21 anything.

22 SENATOR BOWEN: No, I think that person does in
23 fact lose. They changed the benefit going forward.

24 Take a look at what GM has done. You actually
25 have a midstream change when you change benefits in any employee
26 plan.

27 SENATOR BATTIN: That's not GM. It's a GM
28 subsidiary that declared bankruptcy. That's back to the

1 argument about the full faith and credit of --

2 SENATOR BOWEN: Any employer, you can't change
3 benefits accrued or the rate of accrual in the past, but you
4 certainly can change things prospectively.

5 MR. CRANE: I respectfully disagree.

6 SENATOR BOWEN: Okay.

7 SENATOR BATTIN: We could go bankrupt, but the
8 likelihood of that is --

9 SENATOR BOWEN: No, I'm just asking about it. I
10 think you can change benefits perspectively. We do it all the
11 time. Otherwise, how could you set up a scheme in which you
12 have new hires come in at a lower rate than current employees?

13 CHAIRMAN PERATA: Gee, I doze off for a second
14 and I lose control.

15 SENATOR BATTIN: That goes back for --

16 SENATOR BOWEN: Sorry. This is what happens when
17 you have somebody who used to be a pension lawyer on the Rules
18 Committee. May I apologize to all.

19 CHAIRMAN PERATA: I never knew that.

20 SENATOR BATTIN: That goes back to Mr. Crane's
21 point about --

22 SENATOR BOWEN: I did three years. Do you know
23 why they make so much money? Because it's so boring.

24 [Laughter.]

25 SENATOR BOWEN: But it's very important. You get
26 paid a lot to get into that fine detail.

27 SENATOR BATTIN: Doesn't that go back to
28 Mr. Crane's point about it not being his obligation. It would

1 be against his fiduciary obligation work to look out for future
2 employees.

3 SENATOR BOWEN: I think he speaks very well for
4 himself.

5 CHAIRMAN PERATA: I was going to say, it's a
6 funny notion, coming to his defense.

7 SENATOR BOWEN: I just wanted to understand.
8 Couple of other questions --

9 MR. CRANE: Maybe I should take out the kids'
10 photograph.

11 [Laughter.]

12 SENATOR BOWEN: It's okay. I'm not after your
13 kids, really. I'm after teachers' kids.

14 You mentioned contributions, political
15 contributions, and a private portfolio investment.

16 Who are you referring to?

17 MR. CRANE: Are you talking about my statement
18 here, or what are you referring to.

19 SENATOR BOWEN: You said something about --

20 MR. CRANE: Today's statement I did.

21 SENATOR BOWEN: Yes.

22 MR. CRANE: Right.

23 STRS, and this is contrary to virtually every
24 other -- I don't know of another organization in the public or
25 private sector, maybe it's true of PERS as well but I don't
26 know, the board members at STRS are permitted to take political
27 contributions from people who do business with STRS.

28 SENATOR BOWEN: But you can't have a political

1 contribution unless you have a campaign committee open; right?

2 MR. CRANE: I don't know. All I can tell you is
3 that --

4 SENATOR BOWEN: You couldn't take a political
5 contribution.

6 MR. CRANE: No, no. I'm not worried about me.

7 But we have people that are in public office on
8 the board. They can take political contributions from people to
9 whom STRS awards business.

10 We manage \$150 billion. A lot of that gets
11 allocated to people who are money managers, who earn enormous
12 fees, too high a fee in some cases.

13 SENATOR BOWEN: I appreciate your work in that
14 regard. I'm sure it's made you exceedingly popular.

15 MR. CRANE: Yeah, it hasn't.

16 I'm of the opinion we shouldn't do business with
17 people who give contributions.

18 CHAIRMAN PERATA: You might ask your counsel to
19 check the Levine Act and see. There is a state law that those
20 us who are in local government run into when you are on what I
21 call a hand-off board. So, they may check that. They in fact
22 may be barred from doing that.

23 MR. CRANE: Okay, thank you.

24 I hope that was responsive to your question.

25 SENATOR BOWEN: One other management question.

26 I think you've said that the board should be more
27 independent from management. I'm not clear exactly what you
28 mean by that. I thought the board at STRS was ultimately the

1 management.

2 MR. CRANE: We are putatively independent of
3 management. It's just like any corporation. In fact, STRS, to
4 its credit, is taking an increasingly active role in corporate
5 governance around the country and around the world in order to
6 improve returns, for example, in lowering executive pay, et
7 cetera.

8 One of the classic problems in corporate
9 governance is when you have boards and management that are too
10 close. What you want are boards that look at management on
11 behalf of the shareholders and do the right thing for the
12 shareholders.

13 SENATOR BOWEN: I think Mr. Ashburn could
14 probably talk about that in the UC system, boards and
15 management.

16 MR. CRANE: So STRS, to its credit, has been
17 pushing companies to have boards which are more independent of
18 management so that they can render independent opinions of
19 management.

20 I think that the STRS board is insufficiently
21 independent of management.

22 SENATOR BOWEN: What prevents you or the board
23 from being more independent?

24 MR. CRANE: In my case, nothing, until you don't
25 confirm me. So temporarily, I'm independent.

26 But nothing stops anybody on the board from
27 behaving independently, but I do not believe that the STRS
28 management -- and by the way, I said this, this would be true if

1 I was talking about Mother Theresa. This is not about an
2 individual or their character, or something like that. But
3 their interests are different than those of the members and the
4 board.

5 And so, the board should be careful. And I've
6 said this to my fellow board members, should be careful about
7 making sure that information they bring us represents our
8 interests, not management's interests. That's all I mean by
9 that.

10 SENATOR BOWEN: I had understood yesterday that
11 you had resigned your position as special advisor to the
12 Governor for jobs and economic growth. However, from your
13 statement, I take it that it's a conditional resignation?

14 MR. CRANE: I didn't resign yesterday, unless I
15 was fired. I didn't resign yesterday.

16 I told the Senator that I would --

17 CHAIRMAN PERATA: I misinferred.

18 MR. CRANE: Okay.

19 SENATOR BOWEN: All right.

20 MR. CRANE: I'm not --

21 CHAIRMAN PERATA: Stupid.

22 [Laughter.]

23 MR. CRANE: They told me I shouldn't say things
24 unnecessarily.

25 SENATOR BOWEN: The guy went to Michigan. Of
26 course he knows this; right?

27 MR. CRANE: Right. It was a long time ago.

28 SENATOR BOWEN: I guess the question is, how it

1 is that you came to the conclusion yesterday that there might be
2 a real or perceived conflict between your position in the
3 Governor's Office and your position on the STRS board, where
4 you've been for nine months?

5 MR. CRANE: I don't believe that there's any
6 conflict whatsoever. I'm being responsive to Senator Perata.

7 It was his view that I'd have to choose. I don't
8 believe there's any conflict.

9 I believe, and I think people in the Governor's
10 Office will tell you this about me, as I said in my remarks, I
11 am independent to a fault.

12 SENATOR BOWEN: In other words, you're a royal
13 pain.

14 MR. CRANE: Yeah, I am. And the people in the
15 Governor's Office can't count on me to do anything one way or
16 another.

17 SENATOR BOWEN: Maybe you and I should go out for
18 a beer.

19 MR. CRANE: I don't know, you went to Michigan
20 State.

21 [Laughter.]

22 MR. CRANE: But I don't think there's a conflict,
23 but I listened to the Senator and took it to heart.

24 SENATOR BOWEN: Actually, one of my questions is,
25 regardless of where you are physically located -- in the horse
26 shoe, out of the horse shoe -- I assume that your rolodex, and
27 we don't have rolodexes any more -- your Blackberry will contain
28 the same telephone numbers and e-mails, and that your role may

1 not change significantly.

2 MR. CRANE: And in fact, I can volunteer for the
3 Governor. I would leave the staff, but absolutely. You should
4 assume that I would still be in touch.

5 SENATOR BOWEN: All right. That's enough for
6 now.

7 SENATOR ASHBURN: Mr. Chairman.

8 CHAIRMAN PERATA: You make the motions. You
9 don't ask questions. You're stepping out of your role.

10 Go ahead.

11 [Laughter.]

12 SENATOR ASHBURN: That's not my ordinary role.

13 CHAIRMAN PERATA: That's true.

14 SENATOR ASHBURN: This has been a fascinating
15 conversation about theories and hypotheticals, which I
16 personally view as highly irrelevant to your confirmation.

17 And the way that I'm going to get to my point is
18 to ask you, what are the most important qualities that you or
19 any member should bring to this pension governing body?

20 MR. CRANE: I think, as I said in my prepared
21 remarks, we have -- STRS has an enormously difficult task. To
22 compound \$150 billion is huge, number one. It's the second
23 largest pension fund in the country. And you have to compound
24 that at an 8 percent rate, which means you have to double it
25 every nine years, plus you have to overcome your unfunded
26 liability. And you have to do this for a long period of time,
27 because I think that the average life of our liabilities is like
28 26 years.

1 So, I think that our number one goal is to give
2 Chris Ailman the tools to be able to do that. So that means
3 keeping him safe from people wanting him to do investments that
4 he shouldn't do, because it might reduce our yield. I'm talking
5 about political influence.

6 It's one of the reasons I don't like this idea of
7 anybody being able to take contributions from people who do
8 business with us.

9 So, giving him the tools so he can do it, it also
10 means keeping our administrative costs as low as possible. I
11 think last year we earned about a billion dollars, and our
12 administrative costs were one hundred-and-something million
13 dollars. I don't have the exact numbers. So, it will help if
14 we can keep our administrative costs to a minimum, which is part
15 of STRS's mission.

16 SENATOR ASHBURN: What I'm asking you is for the
17 characteristics that an individual should possess, and in the
18 order of priority that they should apply them to the job?

19 MR. CRANE: I guess the number one is listening,
20 which I didn't do well with your first question.

21 I think it's being knowledgeable about -- frankly
22 I think it's being knowledgeable about good corporate
23 governance, because I think you need to know what it is that
24 allows you to build an organization that has the sort of people,
25 like Chris and others, that will grow the assets as necessary
26 over time.

27 I don't think you have to be an investment
28 analyst.

1 I do think you have to be skeptical. If you're
2 looking for characteristics, I think one should be skeptical. I
3 think one should be schooled in the math of investments as much
4 as possible.

5 And I will add that I know that they offer
6 education to board members, but I think STRS should be offering
7 more basic financial education to board members: investment
8 analysis, accounting analysis.

9 I discovered to my distress as we evaluated some
10 proposals during the year that people, they weren't looking at
11 the right things. For example, in some of these private equity
12 deals, the return to the promoters is enormous relative to the
13 return to STRS. The multiples are just disproportionate. It
14 shouldn't be that way, in my view. I wouldn't do that with my
15 own money.

16 So, I think somebody should be schooled in
17 evaluating investments, in accounting, and in how to motivate
18 and put people in a position to do their best job.

19 SENATOR ASHBURN: Do you possess those
20 characteristics?

21 MR. CRANE: I think I definitely possess the
22 first two. I think temperamentally I'm not as perfect on the
23 third.

24 So, but in building our business, everybody knew
25 this about me, so I was very good at some things, and I think
26 I'm good at some things at STRS in this regard.

27 I'm very good at evaluating investments. I'm
28 very good at being skeptical about the math. I'm very good at

1 asking very direct questions to people presenting proposals to
2 us. I'm very good, I think, at looking at the big picture in
3 terms of what STRS has to do to meet its obligations.

4 I think I'm less good at dealing with people
5 inside the staff, and need to get better in that regard.

6 SENATOR ASHBURN: I noticed that you mentioned
7 first corporate governance. Corporate governance, at least the
8 way I would interpret that, means those who make the laws.
9 Those who set the policies. Those who make the rules.

10 Does the STRS board make the rules with respect
11 to California having a defined contribution or a defined benefit
12 plan?

13 MR. CRANE: No.

14 SENATOR ASHBURN: Then why are you being held
15 accountable in this hearing for something over which you do not
16 have responsibility? You don't have a vote on the issue of
17 whether we have a defined contribution or a defined benefit or a
18 blended plan.

19 MR. CRANE: That's correct.

20 SENATOR ASHBURN: So why in your opinion are you
21 being held to answer for an issue of law making which is
22 distinctly the responsibility of the people who are sitting
23 around this table?

24 MR. CRANE: I think people are very worried.
25 Senator Perata said at the very beginning, what took place last
26 year got people very worried.

27 And I think one thing you learn about people over
28 time is, sometimes people stop thinking and just doing what

1 they're accustomed to doing.

2 And I said at an off-site meeting recently with
3 my fellow board members that I really thought -- I'm going
4 outside of what STRS board member -- these were just personal
5 conversations about what I thought teachers should do in terms
6 of negotiating for themselves. I said, step back for a second
7 and just ask yourselves what it is you want, and make sure that
8 you're asking for what it is you want.

9 And I think in that regard, they should ask
10 themselves: Do we necessarily want to be held to just one
11 thing, or this other thing, or do we just want the greatest
12 possible compensation package?

13 This is a long way of answering. I just think
14 people are afraid of something going away that they dearly love,
15 which I understand, and I don't blame them for loving it a bit.
16 And I think that they're looking for a way of making sure that
17 it won't go away, no matter what. And so, they want to try and
18 put the pressure at the STRS level and the PERS level, I guess,
19 to make sure that won't happen.

20 But it's misplaced. They should be dealing with
21 you.

22 SENATOR ASHBURN: On the issue of what you've
23 actually done, you've raised a couple of provocative, I would
24 call them, accomplishments.

25 You've raised the issue of political
26 contributions. I think that's fairly bold for somebody who
27 serves on a board that, I'm sure, collegiality is probably
28 welcomed more than dissention.

1 MR. CRANE: Yes.

2 SENATOR ASHBURN: So the members of the board who
3 would be eligible to receive campaign contributions would be the
4 representative who is a member of a school board, presumably,
5 because they would have a political committee for the reelection
6 or election of themselves to the school board; and the
7 Superintendent of Public Instruction; and the State Controller;
8 and the State Treasurer. Those are all politicians.

9 I'm not sure politicians ought to be on the STRS
10 board. And I used to be on a board of retirement for nine years,
11 and I know how much money is awash in a retirement system,
12 especially when people are coming in, soliciting the business of
13 billion dollar funds for the privilege, or the opportunity in a
14 business sense, of investing money on behalf of the
15 beneficiaries of that board.

16 It is a dangerous combination to have political
17 contributions in the context of an investment board. You're a
18 member of an investment board.

19 MR. CRANE: Right.

20 SENATOR ASHBURN: This Legislature should act
21 immediately to follow up on your initiative, which I think is a
22 significant contribution as far as an accomplishment.

23 The other which I think is equally remarkable is
24 your skepticism over actuarial reports.

25 Those reports are as bogus and as subjective as
26 anything you will ever see in life. And yet, they will govern
27 what happens with the investment practices, and with the
28 assumption rate, and with the unfunded liability, and the

1 contributions that flow to the unfunded liability based on the
2 actuarial assumptions that are adopted by the that board.

3 The members of that board ought to be as
4 skeptical, and they ought to be as resistant to the staff as
5 possible.

6 And I interpret that you've done that.

7 MR. CRANE: Well, I want to correct it a bit.

8 First of all, on the second one, I'm a skeptic
9 only with respect to the rate of return that's assumed. I don't
10 know about the other items, like whether or not --

11 SENATOR ASHBURN: That's the bottom line of an
12 actuarial report.

13 MR. CRANE: And reasonable minds can differ. The
14 STRS staff will be able to show you that the rate of return that
15 they're assuming is right there in the middle with most of the
16 pension funds around.

17 I happen to be -- and I say this too many times,
18 you know -- consensus and conventional wisdom are the deaths of
19 lots of people, and 17 out of 18 financial analysts had positive
20 ratings on Enron just before it went down. So, I can't find
21 safety in numbers just because everybody else believes these
22 numbers are good.

23 I am a big believer that the rates of return,
24 assuming 8 percent, especially on a \$150 billion fund, is
25 really, really, really, hard. Bless them if they can make it.
26 I would assume a lower number. And I think there's a lot of
27 evidence to back up my view.

28 I just want to point out, that's the only

1 actuarial position that I take, and they've got reasonable
2 differences of opinions.

3 And I just want to point out, on the first one,
4 and I thank you for your compliment about that accomplishment,
5 it's not -- this is -- there's not a single company I know, or
6 nonprofit I know, where the board members are allowed to take
7 money from vendors. That's what this is. It just shouldn't be
8 that way. People shouldn't be able to give money to people who
9 work business to vendors.

10 SENATOR ASHBURN: Well, I don't know why I feel
11 compelled to work so hard to support your confirmation. I mean,
12 you're a life-long Democrat. In your own statement you've
13 listed: Gary Hart, Bruce Babbitt, Paul Tsongas, Tim Wirth, and
14 Bill Bradley.

15 MR. CRANE: I worried about that.

16 SENATOR ASHBURN: None of these people are folks
17 with whom I associate myself.

18 But I do associate myself with your
19 independence. And I think the conversation that we've had in
20 hearing today proves that you are well qualified and the right
21 person, in fact, to be on this board.

22 MR. CRANE: Thank you.

23 SENATOR ASHBURN: Because you are independent.
24 You'll probably drive the Governor nuts, as much as anybody
25 else, which I think is a good thing.

26 But for the life of me, I don't understand, if
27 this Committee is going to hold you to a standard for which you
28 are not responsible, I just want to point out, if you are denied

1 confirmation, you are being held responsible for something you
2 didn't do, and something that you may not necessarily believe,
3 and which is beyond the scope of your responsibility. I don't
4 understand when that happens around here, but it happens.

5 As I understand it, the question of a disconnect
6 from direct staff to the Governor serving in this dual capacity,
7 you've addressed that.

8 CHAIRMAN PERATA: I know this sounds like a
9 eulogy, but he doesn't intend it to be.

10 [Laughter.]

11 SENATOR ASHBURN: I hope it's not a eulogy,
12 because I really think that when you take a look at a pension
13 fund, and especially for teachers, who are not paid the best,
14 especially for the beneficiaries of the Teachers Retirement
15 System who retired years ago at very low wages compared to the
16 rate of inflation and the cost of living increase, we need
17 people like you who are independent, who are knowledgeable, who
18 are going to raise issues, and who are going to defend the
19 beneficiaries of the plan, and get the highest rate of return
20 possible. That's the job.

21 If you're not qualified to do it, I don't know
22 who is. I'd rather have you than these other politicians
23 sitting on that board who are taking money for their decisions.

24 Anyway, I support you.

25 MR. CRANE: Thank you, Senator.

26 CHAIRMAN PERATA: Those politicians should wait
27 to be elected governor before they start taking money.

28 [Laughter.]

1 CHAIRMAN PERATA: I was kind of hoping we'd wear
2 everybody in the audience out, but this hasn't worked at all.

3 [Laughter.]

4 MR. CRANE: All my supporters still want to
5 speak?

6 [Laughter.]

7 CHAIRMAN PERATA: The ropes are still being
8 knitted.

9 You want to jump in, too. All right.

10 SENATOR BATTIN: I just have a couple of
11 questions that I would like to ask Mr. Crane.

12 I think the opposition is about to come up here.
13 Their main complaint is that you voted against a motion on the
14 board, that the board should oppose ACA 23, and you voted No.

15 MR. CRANE: Correct.

16 SENATOR BATTIN: In your discussion here today,
17 you have said that you did not feel it was the place of the
18 board to make that policy decision. That that's the policy of
19 the Legislature. Is that correct?

20 MR. CRANE: Yes, and more importantly, that there
21 was no risk to our members, so my fiduciary obligation was to
22 remain neutral.

23 SENATOR BATTIN: Let me ask you, had the motion
24 been that you should support ACA 23, would you have voted Yes?

25 MR. CRANE: No.

26 SENATOR BATTIN: You would very voted No for the
27 same reason?

28 MR. CRANE: Yes.

1 SENATOR BATTIN: So, it's not that you were
2 taking a position on Assemblyman Richman's Constitutional
3 Amendment. It was that your position was, you shouldn't be
4 taking a position?

5 MR. CRANE: That's correct. Thank you for
6 clarifying that.

7 SENATOR BATTIN: That's it.

8 CHAIRMAN PERATA: We're going to take a brief
9 respite for the scribe.

10 [Thereupon a brief recess
11 was taken.]

12 CHAIRMAN PERATA: We will reconvene right now.
13 With that, I'm going to ask anybody here who is
14 in support to come forward. They all left, I'm sorry.

15 There is the family, and there's Richard
16 Costigan, too.

17 Now those who are here in opposition, I'm
18 assuming some of you are, I would like it if you would be brief,
19 and pithy, and direct. There's lots of sunshine outside left.

20 Please come forward.

21 Are you going to read all that? God bless you.
22 Do you have your family with you, pictures?

23 MS. EASTERLING: I do have a beautiful 22 month
24 old baby girl, who's getting all four of her second year molars.
25 So, you can imagine --

26 CHAIRMAN PERATA: Oh, that's why you're here.

27 [Laughter.]

28 MS. EASTERLING: That's why I'm here. It's

1 better to be here than to be with her right now.

2 Good afternoon. I'm Lori Easterling with the
3 California Teachers Association, and we represent about 330,000
4 teachers here in the State of California. I'm here representing
5 Barbara Kerr and the officers also of the California Teachers
6 Association.

7 Just wanted to tell you a little bit about our
8 process and the reason for our opposition to David Crane.

9 We did interview all of the STRS nominees. We
10 had a set of about a dozen questions that we asked each of the
11 nominees. And the committee consisted of our liaisons to the
12 STRS board, our committee members to our retirement committee of
13 the FCTA. And they interviewed each one of them with the same
14 set of questions.

15 So based on that interview, based on actions at
16 STRS board, and our research on Mr. Crane, we do have an oppose
17 position on Mr. Crane.

18 There's been lot of talk about ACA 23 and his
19 vote on that particular piece of legislation. And we are
20 concerned about his narrow view of his fiduciary role.

21 We see a fiduciary as someone who is able to
22 anticipate problems with the fund.

23 You know, I have an almost two-year-old daughter,
24 and I know about the problems, you know, with a child, and I can
25 forecast, you know, what's in the next room that she can get
26 into trouble. So, I can anticipate those kinds of problems.

27 And so with the narrow view that he has as a
28 fiduciary, he's unwilling to say to the Legislature who's in the

1 next room, no problems with a piece of legislation.

2 If he, as a STRS board member, cannot be an
3 expert to make recommendations to the Legislature, then who can?

4 I know ultimately it is your responsibility to
5 take the positions that you do in dealing with defined benefits
6 and defined contributions, but you're also asking the STRS board
7 members for their opinion on -- on how to deal with some very
8 crucial issues.

9 So yes, we do hold him accountable for those
10 kinds of opinions.

11 Yes, sir.

12 SENATOR BATTIN: First off, I don't ask the STRS
13 board for their opinion on legislation. It's not their job.

14 But did you hear Mr. Crane's response to my
15 questions about why he voted the way he did, and if the
16 situation, the wording, was completely reversed, his vote would
17 be the same?

18 MS. EASTERLING: Yes, sir.

19 SENATOR BATTIN: Had he voted with the majority
20 on the board, you would be here, yes or no?

21 MS. EASTERLING: What I feel, sir, is that STRS
22 has an obligation, all the STRS board members, to have input on
23 legislation.

24 And what he did was, you know, he said that he
25 would be neutral on it, right.

26 SENATOR BATTIN: That he didn't believe --

27 MS. EASTERLING: Then would he not -- would he
28 not be neutral on every other piece of legislation to become --

1 to come before STRS that might give you advice and counsel?

2 SENATOR BATTIN: I don't know. Have there been
3 other pieces of advisory votes?

4 MS. EASTERLING: There's all kinds of legislation
5 that comes before STRS that the STRS board takes opinions on and
6 makes recommendations on.

7 SENATOR BATTIN: I'm going to ask, and I'm not
8 aware of the answer here, so forgive me if I get it wrong.

9 When was the last time CTA opposed a STRS board
10 member?

11 MS. EASTERLING: I guess it was Smalley, Kathleen
12 Smalley last year.

13 SENATOR BATTIN: Before that then, how long?

14 MS. EASTERLING: I don't know.

15 SENATOR BATTIN: STRS came to the Legislature a
16 few years ago and said that the actuarial table would be fine,
17 and that we should vote for these benefit increases.

18 They were wrong. The increases got voted for.
19 They were wrong. Now you have a liability.

20 So, would all of those people who didn't give the
21 Legislature accurate advice, should all of them have been
22 opposed because they failed in what they said the STRS board, or
23 they said what STRS would do. They failed on it. They missed
24 it.

25 Where Mr. Crane has said that he's skeptical on
26 the return, do you view that as a negative?

27 MS. EASTERLING: What I will say to you, because
28 I think we've got two different questions that you're asking.

1 I'm asking for Mr. Crane, as well as the other
2 STRS appointees, to take an active role. They're put on STRS
3 for their qualifications or their expertise to run the STRS
4 board.

5 What I'm asking is, on pieces of legislation that
6 are important, to take a position on a piece of legislation.

7 SENATOR BATTIN: Do you think that Mr. Crane is
8 not qualified?

9 MS. EASTERLING: Well, I think Mr. Crane --.

10 SENATOR BATTIN: Do you think his business acumen
11 is lacking?

12 MS. EASTERLING: I think not only when we talk
13 about expertise, qualified, we talk about his responsibility as
14 an fiduciary, and that fiduciary role is to be responsible to
15 California's teachers and the retired teachers.

16 And we don't believe his opinions, which are also
17 part of his expertise, are in alignment with what we believe.

18 CHAIRMAN PERATA: So you're against him, okay.
19 Thank you.

20 MS. EASTERLING: I just have one other remark in
21 regards to what Mr. Crane has referred to as intergenerational
22 theft, which is the ability to deal with the unfunded liability,
23 and to shorten the time of which to pay off the unfunded
24 liability.

25 We believe that people are in kinds of STRS funds
26 because of the trust that's shared across generations. That
27 when there is a profit and loss, that's not just shared by the
28 people that own it, but the people in the future because they

1 can also share in the profit.

2 So, we don't believe that the view for dealing
3 with the unfunded liability should be as narrow.

4 So for those reasons, we're asking for you to
5 oppose Mr. Crane.

6 CHAIRMAN PERATA: Thank you.

7 MS. SANCHEZ: Good afternoon. Delores Sanchez,
8 representing the California Federation of Teachers, with a
9 membership of 80,000 teachers, all of whom are in the State
10 Teachers Retirement System.

11 We are opposed to the confirmation of David Crane
12 to the STRS Board.

13 Before I proceed, I'd like to tell the Committee
14 that CFT has worked with the STRS board for many decades. And
15 in that context, this is an unusual position for the CFT, as
16 this is only the second board member that the CFT has seen fit
17 to oppose.

18 Our opposition, the basis of our opposition is
19 that we believe that Mr. Crane violated his fiduciary duties as
20 prescribed under the State Constitution and the state statutes
21 under the Education Code. Quite simply, the consulting actuary
22 concluded that the measure was not sound from an actuarial
23 perspective. The STRS fiduciary council used that information
24 in part to opine that the board should conclude that they must
25 object to ACA 23 on fiduciary and constitutional grounds.

26 Despite being presented with both that opinion
27 and that conclusion, Mr. Crane voted against the staff
28 recommendation.

1 Therefore, we believe that he violated his
2 fiduciary duty.

3 I'd like to also note that, you know, it's
4 important -- we think it's important for the Rules Committee to
5 remember that because teachers are prohibited from paying into
6 the Social Security program, the defined benefit pensions that
7 teachers earn from STRS is the only guaranteed benefit that they
8 receive. Changing to a defined contribution plan and a greatly
9 reduced defined benefit plan would therefore seriously lessen
10 that guaranteed benefit.

11 For these reasons, we request that Mr. Crane not
12 be confirmed.

13 CHAIRMAN PERATA: Thank you.

14 MS. BAKER: Good afternoon. My name is Jennifer
15 Baker. I'm with the Faculty Association of California Community
16 Colleges.

17 Unfortunately, we also are here in opposition to
18 Mr. Crane's appointment.

19 I'd like to reiterate that we do support the
20 contentions that were made previously, but also wanted to note
21 that there is an ongoing dialogue and relationship between Cal
22 STRS and the Legislature in regard to pending legislation.
23 Oftentimes, Members choose to listen to it, and many times just
24 as often, Members choose to ignore it.

25 But what is important is that the Teachers
26 Retirement Board, Cal STRS, does work to maintain an ongoing
27 dialogue to communicate interest, favor or disfavor towards
28 pending legislation, and in regard to budgetary issues that the

1 Legislature considers on an ongoing basis.

2 Because of that historical precedence, it is very
3 important to maintain that members of the Teachers Retirement
4 Board do consider multiple options. Some may or may not be
5 political at times, but they do have an impact on both current
6 and retired members of the California State Teachers Retirement
7 System.

8 So, based on the previous contentions, we also
9 would like to oppose.

10 CHAIRMAN PERATA: Thank you.

11 MR. LOW: Mr. Chairman, Dave Low with the
12 California School Employees Association.

13 We certainly don't question Mr. Crane's
14 credentials or technical qualifications.

15 But we do question whether he meets the test of a
16 fiduciary responsibility.

17 Senator Bowen noted that Mr. Crane called defined
18 benefit pensions a special privilege. And in fact, in that
19 article she quoted, the quote was, "a burdensome special
20 privilege." In the same article, he openly endorsed the
21 Governor's defined contribution pension proposal in 2005, and
22 stated that, "All the Governor proposed would be limitation to
23 some of the special privileges held by government employees, so
24 I fully support the Governor's agenda."

25 We believe that his support for defined
26 contribution plans and pensions is damaging to teachers, and we
27 would also question the issue about his position on ACA 23. In
28 fact, Mr. Crane asserts that they should not be taking a

1 position on this because there is no damage to the members of
2 the system.

3 I would differ. First of all, I don't think
4 teachers should be sanguine about the unfunded liability, and
5 increasing the unfunded liability under a defined contribution
6 plan or ACA 23. The Legislature is not under any obligation to
7 increase the employer contribution to meet this burden. And in
8 fact, historically, has not done so.

9 What is also at risk is, nonvested retirement
10 benefits. And I recall that that's exactly how, under the Cal
11 PERS system, the employees lost their IDDA and EPTA cost of
12 living adjustments, a \$2.3 billion removal of funds from Cal
13 PERS, and a loss of cost of living because it was deemed to be a
14 nonvested benefit. There are nonvested benefits under Cal STRS,
15 and I think that the cost of living adjustment is one of them,
16 put at risk by ACA 23, when you increase the unfunded liability.

17 So, I think Mr. Crane's wrong on that issue. I
18 think that it does put the teachers in danger.

19 And finally, I would say that nothing would
20 demonstrate -- under ACA 23, the other things that the
21 initiative would do was reduce the formula for retirement from
22 two percent to one percent, and increase the retirement age from
23 age 55 to age 65. Nothing demonstrates a lack of support for
24 teachers than low wages and cutting benefits to a one percent at
25 65 formula.

26 We'd ask your opposition to this confirmation.

27 SENATOR BATTIN: Mr. Crane, have you ever come
28 out in favor of ACA 23?

1 MR. CRANE: No, I have not.

2 MR. LOW: My assertion is, he should have come
3 out in opposition to it because it hurts the teachers in the
4 system. And that a neutral position is not adequate. It fails
5 the fiduciary test.

6 CHAIRMAN PERATA: Thank you.

7 Next.

8 MS. CARLSON: My name is Beverly Carlson. I'm a
9 third generation teacher from Northern California, from a family
10 of teachers. As I was driving down here, there were eleven
11 members of my family who retired under Cal STRS, who -- the
12 stewardship of which serve them well. Ten were women and one
13 was a man. My uncle was a superintendent, so his salary was
14 considerably more.

15 I've attended Cal STRS meetings for nearly 20
16 years, first as an active member of the California Teachers
17 Association, and now as a retired member. I've been to more Cal
18 STRS board meetings, and every single trustee except one.

19 So, I've seen the good years, when we were
20 over-funded. I've seen the years when we were 40 percent
21 funded. I was there when the stock market fell and put us into
22 the precarious situation we were for a while.

23 For of the reasons that have been stated before,
24 I believe that we have a system that works well for the members,
25 and we oppose confirmation.

26 Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. WALRATH: Dave Walrath, representing

1 California Retired Teachers Association.

2 Not to belabor the point, I'll just say we also
3 request nonconfirmation of Mr. Crane for the reasons that have
4 already been presented.

5 CHAIRMAN PERATA: Thank you, sir.

6 MR. SELIX: Rusty Selix, Association of Retired
7 Teachers, LA Unified and LA Community College retirees.

8 We're also opposed, and no reason to give
9 additional reasons. We have the same level of discomfort with
10 whether he is really there to do our best good.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MR. VILLASENOR: Sal Villaseñor with the
14 Association of California School Administrators.

15 And just for the record, we do represent some
16 ex-PE teachers, but for the most part --.

17 [Laughter.]

18 CHAIRMAN PERATA: Thanks for listening. That's
19 great.

20 MR. VILLASENOR: But it's just noted that
21 obviously the majority of school administrators are former
22 teachers and part of STRS. And so, from the School
23 Administrators Association, we have similar concerns that have
24 been raised today.

25 For those reasons, we ask opposition to this
26 member.

27 CHAIRMAN PERATA: Thank you.

28 This is Terry Brennand. He's got his tie on. A

1 lot of people didn't recognize him when he walked in.

2 [Laughter.]

3 MR. BRENNAND: I usually don't testify during
4 daylight.

5 Thank you, Mr. President, Senators. Terry
6 Brennand on behalf of Service Employees International Union.

7 We are also opposed to this nomination. Thank you

8 MR. MORAN: Mr. Chair and Members, Pat Moran
9 with Aaron Read and Associates, representing the Peace Officers
10 Research Association of California and the Professional
11 Engineers in California Government.

12 We're also opposed to the nomination. Thank you.

13 CHAIRMAN PERATA: Thank you.

14 MR. HAWKINS: Mr. President, Senators, David
15 Hawkins with the California Faculty Association.

16 We're also opposed to the nomination.

17 CHAIRMAN PERATA: Thank you.

18 MS. BOUMA: Mr. Chair and Members of the
19 Committee, Christy Bouma, representing the California
20 Professional Firefighters, and representing myself as ten-year
21 inactive, currently inactive, member of STRS.

22 We're opposed to this confirmation.

23 CHAIRMAN PERATA: Did you ever go off the beaten
24 path. You were a teacher, and now you're a lobbyist?

25 Yes, sir.

26 MR. GOLKA: Good afternoon, Mr. President and
27 Senators. Joshua Golka with SEIU Local 1000, also in
28 opposition.

1 CHAIRMAN PERATA: Thank you.

2 MR. VARGAS: My name Afrack Vargas. I'm with
3 the California State Firefighters Association.

4 We're joining our brothers and sisters in STRS in
5 opposing this nomination. Thank you.

6 MR. SMITH: Mr. Chair, Jeremy Smith on behalf of
7 the California Labor Federation, also in opposition.

8 CHAIRMAN PERATA: Thank you.

9 MR. JELINCIC: J.J. Jelincic, President,
10 California State Employees Association.

11 Most of our members are obviously PERS, but we do
12 have a number of STRS members as well.

13 We are opposed to the nomination.

14 CHAIRMAN PERATA: Thank you.

15 Anything further?

16 Well, I want to go a little bit to the heart.

17 I must say that the comments about special
18 privileges disturb me as well. And whether it was intemperate
19 or what have you, I've made statements in my life that I'm still
20 living down and wish I hadn't said, but they're part of my
21 resume.

22 But the first thing was, you said you would
23 remedy this. And I'm sorry if I misinferred. I thought that
24 you were resigning when you walked into my office.

25 But what I saw, and still do see it, a natural
26 conflict of interest. And you obviously do not need the work.
27 The money, I doubt. I've seen your 510-701 one.

28 But the fact is that you are working for someone,

1 and then you are representing him in some capacity. You carry
2 his flag. You carry the Governor's flag. You're always going
3 to do that. You're never going to be David Crane now; just
4 "guy." That's gone.

5 But what troubles me more, and I'm just going to
6 ask you some direct questions. You're not under oath, but you
7 strike me as a very straight-forward, honest man.

8 You were his economic advisor. You were selected
9 by the Governor at outset of his gubernatorial career to help
10 guide his economic policy.

11 And I need to know, what was your role in the
12 centerpiece of what he did last year, which was to try to
13 reform, quote-unquote, "public pensions?"

14 MR. CRANE: None.

15 CHAIRMAN PERATA: None.

16 When you were there, or you were in the
17 Governor's environment, what would you characterize as the
18 motivation for doing this?

19 MR. CRANE: Well, I will tell you that you're
20 more familiar with the way Sacramento works than I am, and more
21 familiar with the players.

22 When -- in the early days of our administration,
23 and we had a different Chief of Staff than we have now, it
24 wasn't as if I was exactly welcomed into the circle.

25 So, I wasn't -- you know, I played significant
26 roles in early in the administration on things like Proposition
27 57, because my expertise was clear there in terms of we had to
28 refinance that short-term debt, or else we were going to have

1 serious problems the following summer, and putting together a
2 debt group to help us with stuff like that.

3 But when it came to those sorts of proposals at
4 that period of time, I wasn't included. And Pat -- I've
5 forgotten Pat's last name -- in the internal discussions.

6 CHAIRMAN PERATA: Now, if you were scratching at
7 the window but you were allowed in, what would your advice have
8 been, in retrospect or at the time? Good philosophy? Bad
9 philosophy?

10 MR. CRANE: You know, I have to say, you know,
11 it's -- it's a hypothetical. Since then, I have studied the
12 issue a lot, which is just the way I am. I just start studying
13 things like this. And I have spent a lot of time on the issue.

14 And I mentioned -- I made a reference to New
15 Jersey more than once today. They did a very detailed study
16 after they got into their troubles in New Jersey, and they came
17 back -- and I talked to the guy that ran whole thing. They came
18 back with the decision to maintain defined benefit plans, but
19 they changed -- you know, the big issue that happened in '98 and
20 2000, I wasn't here then, but looked over who voted for those
21 things, and the benefit increases, and then market went down.

22 Had I been there, knowing the way I am about
23 investment returns, I would have been the first person to tell
24 you, do not assume the returns that these people are telling you
25 to assume.

26 So, I think the issue is more when it comes to --
27 and the net result is, we have an overhang today as a
28 consequence.

1 The bigger issue than the type of plan is either
2 the transparency or the knowledge that's associated with changes
3 to that plan, because when you do something like that, and the
4 consequences are way down the road, and all the analyses are
5 done by model and present values, you've got to bring it home to
6 people what it really means.

7 So, I think what I would do -- you asked me a
8 hypothetical question, what would I have done -- I probably
9 would have looked very seriously at the right way to -- I would
10 have tried to figure out what is the real problem? Is the
11 problem that it's a defined benefit plan versus defined
12 contribution? Because defined contribution -- let me give you
13 an example.

14 When I spoke to the fellow that ran the New
15 Jersey analysis, a former Goldman-Sacks investment banker, I
16 think, worked for Corsine, or something, he said -- when I said,
17 "So why did you decide to retain defined benefit?" He said they
18 did detailed personnel studies, and it's clear that there's an
19 outsized benefit to people in the public center -- in the public
20 sector from defined benefit plans. It's a different
21 temperament, whatever. But there is a benefit for doing it.

22 And if you put it into financial terms, which I
23 do, as I mentioned, to a fault, it means that public employees
24 will imply maybe a lower discount rate than people in the
25 private sector might. In that case, it makes sense to retain
26 the defined benefit plan.

27 But I would always worry about this transparency
28 issue. So, I would just want to make sure that when benefits

1 change, it's brought home so people know what they've done.

2 CHAIRMAN PERATA: As I said, we wouldn't be
3 sitting here, having this discussion today, had it not been for
4 somebody stepping off the curb with their left foot last year.
5 I mean, it was an outright assault on public employees, and I
6 don't care how you color it.

7 It was, fortunately, really ill-advised, because
8 they took on too many. They should have gotten somebody in the
9 ally and pummel them, rather than getting a whole damn brigade.

10 You know, it's kind of tough to screw around with
11 firefighters right after 9/11 and nurses. And nurses will kick
12 your ass.

13 But I think, you know, you said it; I've said
14 it. The specter of that has not yet passed. This is an
15 election year. Everything we do, of course, isn't just
16 happening because it's an election year, and will it come back
17 again.

18 So, I think that's the biggest concern I have.
19 And that, for better or for worse, you know, you make up your
20 own mind and your own decisions. But you, having been there at
21 creation, having been in the role that you were in -- and I
22 accept at face value that you weren't in the room making these
23 decisions, and your opinion probably wasn't solicited -- but you
24 were still wearing the same colors; you had the same uniform on.

25 And I think that's what's troubling. It appears
26 to be a pretty narrow interpretation that one vote cast on one
27 thing would provide people with so many jitters and make so many
28 people nervous, and that you're only one guy on a board of

1 twelve.

2 But I looked at that board, and I don't know you
3 from yesterday; right?

4 MR. CRANE: Right.

5 CHAIRMAN PERATA: But you pretty much could take
6 their lunch. No, don't defend yourself.

7 MR. CRANE: Not so far.

8 CHAIRMAN PERATA: So, you're just not another
9 person. And I have no disrespect for the two previous ones, but
10 they were in anthropology.

11 [Laughter.]

12 CHAIRMAN PERATA: They didn't go to that
13 cutthroat Hastings Law School.

14 So, I'm going to tell you and not torture
15 everybody any longer, I want hold this over for votes for next
16 week because I'm just quite not sure.

17 You through me a curve yesterday, candidly. We
18 had a candid conversation. You went downstairs; you came back
19 and said, "You're right. I should make a choice."

20 I can't understand for the life of me why you
21 chose this. I really can't, why you'd rather be on STRS.

22 There's a difference. You and I both know this.
23 There's a big difference between being an unpaid advisor in the
24 minds of people and being a paid member of the Cabinet. I don't
25 care whether you need the damn money or not.

26 So, I was really just candidly surprised. I
27 figured that you would have punted this. You could have had the
28 pick of a lot of things, and choosing this is very curious to

1 me.

2 So, I'm going to ask my colleagues to bear with
3 me and put it over a vote-only next week, whether you bring your
4 pictures back or not.

5 I want to thank you for your candor. And I want
6 to thank everybody else for being here. I do understand
7 everybody's concern. I share it. I'm just not quite yet sure
8 which side to come down on.

9 MR. CRANE: Thank you, Senator.

10 If I may, I just want to leave --

11 CHAIRMAN PERATA: Please.

12 MR. CRANE: -- leave you with one last thing.
13 That is, in my company, I just want to -- I'm going to try and
14 leave with you a sense of my independence.

15 CHAIRMAN PERATA: You know what? That isn't a
16 question for me. It really isn't. No, no.

17 I know a lot of your friends, and they all have a
18 pretty common read on you. You're just a bull in a china shop,
19 you know.

20 MR. CRANE: Okay.

21 CHAIRMAN PERATA: Jerry Brown with a nice suit.
22 You know, people have said a lot.

23 [Laughter.]

24 MR. CRANE: It's getting worse. You'd better
25 adjourn quickly.

26 CHAIRMAN PERATA: That's frankly never been my
27 concern, is your independence. You acquit yourself well.
28 Obviously, you have some very strongly held views. And, you

1 know, the kind of people you'd like in government.

2 It's the question of a fit, I think, in history.

3 MR. CRANE: Thank you. I'll do whatever you say.

4 CHAIRMAN PERATA: Thank you, David. Appreciate
5 it.

6 Thanks, everybody.

7 [Thereupon this portion of the

8 Senate Rules Committee hearing

9 was terminated at approximately

10 3:35 P.M.]

11 --ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

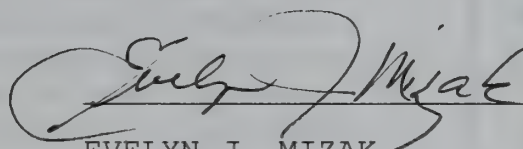
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

26th day of May, 2006.



EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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CALIFORNIA LEGISLATURE

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SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 9, 2006

James W. Kellogg
1799 Dune Point Way
Discovery Bay, CA 94514

Dear Mr. Kellogg:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as Director of Conservation on Wednesday, May 24, 2006.

Following are questions which we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that Senators might conduct a more informed discussion with you at the hearing. Please have your responses in our office by the close of business on May 19th. If you prefer, you can fax your responses to us at (916) 445-0596.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Fish and Game Commission? What goals do you have for the commission and how will you accomplish them?*

Mission

The Legislative Analyst, among others, has noted that the commission has a dual mission to both promote and regulate hunting and fishing, and to assure protection of native plants, fish, and wildlife. Occasionally, these missions may conflict.

2. *How do you balance the promotion and regulation of fishing and hunting with protection of the state's public trust resources in its native plants, fish, and wildlife?*
3. *How do you evaluate the scientific information presented to you? Do you believe you receive sufficient assistance to prepare yourself?*
4. *At your December 2005 hearing, the commission announced it would take the month of January to set new priorities. What priorities has the commission established?*

DECLINE IN OCEAN RESOURCES

The U.S. Commission on Ocean Policy has recognized the decline in ocean resources, a fact that has also been reported in numerous scientific journals. The Marine Life Management Act and the Marine Life Protection Act both delegate significant responsibility to the Fish and Game Commission to manage ocean resources wisely for long-term sustainability.

5. *Should the commission take action to address the decline in our fishery resources?*
6. *Is the commission considering the creation of additional marine reserves or other fishery management plans?*

Enforcement of Fish and Game Laws and Regulations

Currently the Department of Fish and Game has 192 wardens. This is the level of wardens the department had in the 1960s. If each warden was out in the field at the same time, each would have to cover over 800 square miles. Twenty-two to 23 wardens are expected to retire this year with others transferring to other agencies. Of the 14 individuals who were scheduled to attend the wardens' training academy, 5 have withdrawn because of low salaries compared to other enforcement agencies.

By comparison, Florida has 722 wardens and Texas has approximately 500. It has been estimated that an additional \$17.4 million would address the low salary and compaction issues and bring the warden strength up to 352 positions.

7. *As you begin your second four-year term, do you believe the commission can have any impact on warden staffing levels?*

James W. Kellogg
May 9, 2006
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Please direct your responses to Nettie Sabelhaus, Rules Committee
Appointments Director, Room 420, State Capitol, Sacramento, CA, 95814.

Thank you for your time and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

DON PERATA

Cc: Fish and Game Commission
DP:nscm



Founded 1889

UNITED ASSOCIATION

of Journeymen and Apprentices of the
Plumbing and Pipe Fitting Industry of
the United States and Canada

JAMES W. KELLO
International Representative
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Discovery Bay, CA 94
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e-mail: jmk@uanet.org

General Office File Reference:

Don Perata Chairman Senate Rules Committee

Answers to questions

1. During my previous term and in particular while I served as president the past two years the commission was involved in many issues. My main goal will be to complete whatever unfinished items remain and continue the good work that the commission has been doing.
2. With each and every issue we deal with we must rely on the professionals in that particular field to provide as much information as possible. Across the Nation hunters and fishermen provide more than 75% of the annual income of the 50 state conservation agencies. Hunters and fishermen are a huge part of on the ground projects protecting our natural environment and our fish and wildlife. Knowing that helps us in our efforts to attempt to provide balance.
3. On almost every issue we are faced with constituent groups who provide testimony and scientific information from both sides of the issues. In many cases I do not believe we receive sufficient assistance to prepare for the important decisions we must make. In those instances we are faced with making decisions based on who and what we believe.
4. The commission has re-established with the department that it is the commission who sets policy and prioritizes policy. That had some how been lost in the shuffle of things. The commission is working with the department to promote a separate budget for the commission separate from the departments budget. Working with the department to increase their overall budget so that enforcement of regulations and legislative mandates can be implemented. This is huge, because there is not enough staffing to manage properly, police and study the MPA's that were recently established within the Channel Islands in order to gage their success.
- 5&6 The commission has had several joint meetings with the Blue Ribbon Task Force headed up by Phil Eisenburg who will be making recommendations to the department who in turn will be making recommendations to the commission concerning additional marine reserves. At that time the commission will be charged with the ultimate decision of determining the need for additional marine reserves.

William P. Hite
General President

Patrick R. Perno
General Secretary-Treasurer

Stephen F. Kelly
Assistant General President



7. In my opinion this is one of the biggest disasters in the state. Off of the radar screen and a low priority for the decision makers who can fix it. Wardens are the police and enforcers of our fish and wildlife, natural environment, protected and endangered species. They can not do it with the present low numbers that they have. I have fought the fight for better pay and increased numbers of wardens from my very first day as a commissioner. While the legislature continues to intact additional laws to increase their work load they won't increase the budget to compensate. With the size budget this state has it seems this would be a small request to shift enough money fix a huge problem that concerns so many. Every single commissioner has committed to do their part to help lobby on behalf of our wardens.

1. The first part of the paper discusses the importance of the study of the history of the United States.

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5. The fifth part of the paper discusses the importance of the study of the history of the United States.

6. The sixth part of the paper discusses the importance of the study of the history of the United States.

ELIZABETH DAVIS ROGERS

General

1. Provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California State Teachers' Retirement Board?

During my tenure on the California State Teachers' Retirement Board I would like my efforts to be instrumental in assuring the financial integrity of the fund so that current and future teachers and their beneficiaries have a safe, comfortable and honored retirement. In the current environment of budget cutbacks, I feel that the people who have educated our children should feel assured of their retirement and that a sound pension plan will encourage new teachers to take up the profession.

Unfunded Liability

1. a How much confidence to you have in the actuarial studies presented to the board?

I am very confident about the quality of the actuarial studies presented to the board.

1. b How do you decide your confidence level in the actuarial information?

Since it is the future that is being projected, I feel there is no "correct" or "incorrect" actuarial number. Rather, there is a model which yields a result based on certain assumptions about the future, I feel that to have confidence in the studies one has to have confidence in the quality of the team preparing the study, reviewing the study and cross checking the study as well as comfort in the range of reasonableness of the assumptions. Since this is a highly technical field, the quality of the professional actuarial consultants, the staff and auditing consultants is paramount. The system of checks and balances through the use of several firms is impressive. CALSTRS uses both internal and external actuaries to evaluate the actuarial soundness of the overall plan and proposed changes to the plan and the internal and external actuaries review each other's work. In addition, in 2004, CalSTRS secured the services of two other independent auditing firms, Gabriel, Roeder, Smith and Co, and Cheiron, to review the methodology used by Milliman, CalSTRS' outside actuary, in undertaking the actuarial valuation and the experience study for the primary CalSTRS retirement program that identifies the assumptions on which the actuarial valuation is based. The independent actuarial firms concluded that the economic assumptions, demographic assumptions and asset valuation assumptions, and the valuation methodology fall within the framework of reasonableness. Based on this work I am confident that CALSTRS is facing an unfunded liability that must be addressed.

2. a In less than a decade, it is estimated that 100,000 teachers will retire. Do you believe the actuarial model used by the board adequately takes this into account?

The model used by the board reflects the age of currently active members and their anticipated rate of retirement, based on recent experience in the plan. As a result, I believe that the actuarial model adequately takes this into account.

2. b What advice and counsel should the board be giving local school districts facing the challenge of significant pension costs?

Beyond indicating to the Boards that the funding of pensions is going to be a continuing significant item and they should be informed on a regular basis about the actuarial projections to keep in the forefront of their thinking about budgets, I feel my current level of knowledge would not warrant more commentary.

3. Based on the information you have, what do you believe is the best option for addressing the unfunded liability? On what basis did you reach your conclusion?

I do not believe that I can make a decision about the options before us at this time partially based on my limited knowledge as a new board member and partially based on the fact that the options are currently a work in progress. At the December board meeting, more suggestions were made to a list of options which the staff had prepared and more information was sought to supplement the initial analyses of these options. We will have an ongoing dialogue with staff and board members about all possible solutions as well as seek input from the various stakeholders in the process. It is my hope that the board will be able to develop a unified consensus about a bundle of recommendations to the legislature as to steps which may be taken to address the unfunded liability. It would be premature to come to any conclusions until the full process has run its course.

4. What criteria priorities and issues should be considered by the board in developing an approach to address the unfunded liability?

The first criteria should be the overriding fiduciary obligation of the board to make sure that the fund is sound from an actuarial perspective and can meet its obligations to the members. The second criteria would be to minimize costs to the members, beneficiaries, the school boards and the taxpayers. The challenge will be to achieve this end when there are no easy answers.

Proposed Changes to Teacher Retirement Benefits

1. Altering public pension benefits would be a significant change in state policy. What factors do you believe should be considered by policymakers if they wish to consider such a change? Which of these factors do you believe should carry the most weight in making such a determination and why.

Any change which would be made to pension benefits should be done only if there is a perceived risk that the beneficiaries will not receive their promised pension. Consequently, any alternative retirement system should address whatever weaknesses are identified in the current structure. In the current era, with the looming unfunded liability, the Board should look at the full spectrum of choices, and their impacts on one another and the system, and try and work out a solution to achieve the appropriate level of funding that takes all the factors into consideration.

In addition, any alternative benefit structure being considered by policymakers, such as legislators, should be responsive to other objectives that have been identified for the existing

benefit structure. For example, public educators are employed for a longer period of time than other public employees, and the benefit changes made by CalSTRS in recent years were enacted for the purpose of encouraging teachers to stay in the classroom even longer. Those efforts appear to have been successful. If a new benefit plan is enacted, it should similarly provide incentives for public educators to stay in the field for a long period of time.

2. a How would you determine the viability of either a hybrid plan or a defined contribution plan for the future? How would you determine the viability of either plan on the future retirement financial security of the new employees?

The question would be whether such a plan or combined plan would improve the financial position of the beneficiaries. With only very limited exposure to the problem two problems have struck me as significant if CALSTRS were to change its structure. The first is that the challenges facing the CALSTRS board are not ones of structure but of funding and unfunded liability. Analyses by Milliman, the outside actuary, of last year's proposal suggests that the change in structure to a defined contribution plan would put more of a fiscal burden on the existing benefit plan, and not less. The second threat would be from breaking up the investment size and expertise of CALSTRS staff which would then create fragmented and less efficient or financially stable funds. The chances of a fund being poorly managed when they are much smaller, less diverse and unable to hire the best expertise is much greater. These problems would affect current and future employees. However, these are initial impressions and more research is being done by staff on the Richman bill, which has precipitated interest in these questions. This research may provide more answers to the above question in the February board meeting, where the issue will be addressed with a full staff report and recommendation about the Richman bill.

- 2 b. Do you think that such a change is potentially more detrimental to female retirees?

Since approximately 70% of the CALSTRS members are women, by definition, more women are involved in any decision. Staff, in evaluating the impacts of a defined contribution plan, has pointed out that, due to longer life expectancy of women, compared to men, there is a greater probability that a defined contribution plan could result in a lower payment for women to reflect the additional years that payments would have to be made.

3. If there were a change in the retirement plans, do you believe that new public school teachers would receive benefits comparable to existing benefits. Why or why not?

The options being discussed by the Board to address the current unfunded liability are within the context of the current retirement plan and, while perhaps ultimately requiring higher contributions or lower benefits than under the current plan, leave the current benefit program largely intact.

If a new retirement plan was provided to teachers, whether that new plan results in comparable benefits depends on the structure of that new plan. If the benefit is largely based on a defined contribution plan, the benefit the teacher ends up with is going to be entirely dependent on the success that the teacher has in investing his or her retirement funds. One

advantage of CalSTRS is that, not only is the benefit guaranteed to the teacher, but the security of that guarantee is enhanced by the professional investment management provided by CalSTRS staff, a level of investment knowledge that individual teachers would be hard pressed to duplicate without considerable outside assistance.

4. Do you believe it would require an increase in the current teacher contribution rate of 8% to provide new employees with the same level of benefits? How do you make that determination and, if the contribution were to increase, would you characterize that as a pay out?

As with the previous question, the need for higher contributions in a new retirement plan depends on the structure of that plan and, perhaps, the ability of the individuals responsible for investing those retirement funds.

5. What impact would a change to a hybrid plan have on the unfunded liability of the current system?

I believe this question would have to be modeled by the actuarial staff and consulting team and that it is not something that I can respond to without professional analysis, especially because one would have to define all of the assumptions about the nature of the hybrid plan, at a deep level of detail and then fold them into the current actuarial models.

Corporate Governance

1. What are your views on the California State Teachers' Retirement Board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?

The Board's objective is to enhance the long term shareholder's return for the primary purpose of providing benefits to participants and beneficiaries. CALSTRS has been rigorous in pursuing their rights as shareholder's to make sure that the management of the firms in which CALSTRS is invested is responsive to the shareholders and not simply involved in their own self interest and at times irresponsible or illegal uses of shareholder money. The board is willing to step into issues of accountability, compensation, litigation, settlements and so forth when these steps are appropriate. Furthermore CALSTRS has participated along with other institutional investors in developing more responsive governance practices. All of these measures seem to me to be a most appropriate stance for the Board to take. Well governed firms make good investments and poorly governed firms make poor investments. The financial health of CALSTRS rests in making sure that its corporate investments are well managed.

California Legislature

Senate Rules Committee

Questions to be addressed by December 15, 2005

Goals:

Question:

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California State Teachers' Retirement Board?

My goals are fourfold: 1) to oversee the operations of CalSTRS and ensure that it is an efficient and well governed organization 2) to make sure we are providing excellent customer service to our members, retirees and the employers who rely on the System 3) to see that the investments are handled in a prudent manner and 4) to take whatever steps are necessary to maintain the funding of CalSTRS on an actuarially sound basis.

Unfunded Liability

- 1 How much confidence do you have in the actuarial studies presented to the board?

The State Teachers Retirement System hires an independent firm that performs actuarial valuations every two years and experience studies every four years. The firm is Milliman and Company. It is a very well respected firm that has a national reputation for excellence and vast knowledge of the public retirement industry. At that firm, our actuary is Mark Johnson. Mr. Johnson is a FSA (Fellow in the Society of Actuaries) which means he has the highest credentials an actuary can have. Mr. Johnson has been with CalSTRS since 1984 so he understands our plan very well.

In addition to the outside actuary, CalSTRS has an in-house actuary who reviews the work of Milliman.

I also have great confidence in the actuarial studies because CalSTRS commissioned actuarial audits of Milliman's work by two separate actuarial firms last year. Those audits replicated Milliman's calculations and methodologies. Although some suggestions were made by the actuarial auditors, they basically found no problems with Milliman's work..

2. In less than a decade 100,000 teachers will retire. Do you believe the actuarial model used by the board adequately takes this into account?

It is the job of the actuaries to set assumptions for the actuarial calculations. They are well aware of the number of teachers who are facing retirement and also the number of new teachers who will start their careers. The actuaries predict retirement patterns, ages at retirement and also the number of years that teachers will live during their retirement

years. As a Board we review these assumptions for reasonableness. As I understand the process, it is not a mere "rubber stamp". We actually debate the assumptions. We strive to have the clearest picture of reality that we can.

What advice and counsel should the board be giving local school districts facing the challenge of significant pension costs?

It is important that school districts have "early warning signals" if we believe pension costs will rise. Since no one can be assured of the future, we should present the school districts with what we believe to be the best case, worst case, and most likely case scenarios. We should offer to provide them with estimates of their specific costs so they can plan accordingly.

3. Based on the information you have, what do you believe is the best option for addressing the unfunded liability? On what basis do you reach your conclusion?

As a new Board member I have some information but not all the information I need to fully address this question. Last year the staff provided the board with 12 different options which included benefit design changes and contribution increases, among other things. We are reviewing that report and other alternatives right now.

At this time there appears to be no single option that will be a cure-all for the unfunded liability. We will have to discuss alternatives with the policy makers and cost projections with the actuaries. We must keep an open mind and do what is best in the long run even if we are pressured to do otherwise.

4. What criteria, priorities and issues should be considered by the board in developing an approach to address the unfunded liability?

A goal of CalSTRS is to have a stable funding policy and to reach a 100% funded target. The board is presented with a valuation report every two years and experience study every four years. The Board's role is to review the assumptions to make sure they are realistic. Actuaries calculate liabilities funded status and contribution rates.

Consideration of criteria, priorities, and issues all deal with each other. The criteria one uses for approaching the unfunded liabilities help formulate the priorities. From the priorities the issues take shape which brings forth the policy to the members.

How does the criteria affect our long term investments?

What issues should be considered for best case, worst case, and most likely case scenarios for CalSTRS unfunded liability? How is the unfunded liability issue being addressed by School Districts?

Proposed Changes to Teacher Retirement Benefits

1. Altering public pension benefit would be significant change in state policy. What factors do you believe should be considered by policymakers if they wish such a change? Which of these factors do you believe should carry the most weight in making such a determination and why?

In many places, public pension funds are facing difficult times and alternatives are being considered that would never have been considered before. We must deal with the reality of the current situation and not minimize it or exaggerate it.

Policy makers will need to make sure the CalSTRS plan will attract and retain the teachers we need. And the Board, as fiduciaries to the fund, must give the best advice it can about what benefits are affordable. I assume one of the primary considerations will be to avoid the transfer of debt to future generations. In theory, the best pension plans are paid for over the working life of the employee and the benefits do not need to be financed by the incoming workforce.

Policy makers need to present their ideas to the CalSTRS administration and board for consideration so we can ascertain the ramifications to our members. A collaborative effort will be required to deal with the unfunded situation.

How would you determine the viability of either a hybrid plan or a defined contribution plan for the fund? How would you determine the viability of either plan on the future retirement financial security of new employees? Do you think that such a change is potentially more detrimental to female retirees?

Because California educators do not participate in Social Security, the loss of a defined benefit plan is a loss of a "safety net". This is a fact that cannot be overlooked by the Board although it might well be overlooked by policy makers and even some of the CalSTRS members.

The younger workforce and the more mobile workforce may prefer a hybrid or a defined contribution plan and we cannot ignore their preferences. However, we must also look at the statistics about how well people survive in retirement when they have these types of plans. We must analyze whether they can invest and adequately manage their money so that they have a comfortable retirement for 20 or 30 years. This is no easy task for anyone. It may be even more difficult for female retired teachers because of their longer life expectancy.

Finally, we must analyze the impact a hybrid plan or defined contribution plan may have on the actuarial stability of our current plan. As I understand our fiduciary duty, we cannot harm the fund.

2. If there were a change in the retirement plans, do you believe that new public school teachers should receive benefits comparable to existing benefits? Why or why not?

It would be ideal if benefits could be preserved and even enhanced over time but we have seen in the private sector and the public sector that this is not always possible. The promised benefits of yesterday may not be affordable to new teachers. The manner in which teachers are compensated may change in ways we can hardly imagine. All options need to be considered going forward. Trade offs between salary increases, the number of teachers in the workforce and pension benefits should be discussed.

3. Do you believe it would require an increase in the current teacher contribution rate of 8 percent to provide new employees with the same level of benefits? How did you make that determination and, if the contribution were to increase, would you characterize that as a pay cut?

As a new board member, I do not have all the information I would need to give a definite answer to this question. Please see my answer to the questions above.

4. What impact would a change to a hybrid plan have on the unfunded liability of the current system?

The most recent actuarial analysis I am aware of stated that a hybrid plan would jeopardize the actuarial funding level of the plan. However, I must be willing to look at all options to address the unfunded liability.

Corporate Governance

What are your views on the California State Teachers' Retirement Board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?

If by "corporate governance" you are referring to the way corporate directors oversee the companies in which CalSTRS invests, I believe we have a serious responsibility in this area. The current policy on this is very comprehensive and thoughtful.

CalSTRS is a very large shareholder and we do not move in and out of stocks rapidly and frequently. We buy and hold many securities because we have adopted this passive strategy to ensure adequate returns and reduce expenses. As a long term and stable investor, we must be sure that the companies we own are well managed. We must hold boards of directors responsible and make sure that corporate executives have the right incentives. The interests of all parties must be aligned with our interests of achieving decent rates of return over long periods of time.

Kathleen Brugger, CalSTRS Board Member

David Crane

December 15, 2005

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

In response to your letter of November 22, 2005, please see my answers below.

Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the California State Teachers' Retirement Board?*

My goal is to help STRS:

- A. Successfully address its unfunded liability;
- B. Invest its capital to meet its obligations;
- C. Make appropriate assumptions about future investment returns;
- D. Provide reliable guidance to districts; and
- E. Be more effective in its corporate governance activities.

Unfunded Liability

1. *How much confidence do you have in the actuarial studies presented to the board? How do you decide your confidence in the actuarial information?*

I have a low level of confidence in the investment return assumptions. I don't have enough information yet with which to determine my level of confidence in the population portion of the study.

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For the investment return assumptions I rely largely upon the views of investments experts such as Warren Buffett and John Bogle and my own understanding of the capital markets. I don't know yet how best to determine my confidence in the population assumptions.

2. *In less than a decade, it is estimated that 100,000 teachers will retire. Do you believe the actuarial model used by the board adequately takes this into account? What advice and counsel should the board be giving to local school districts facing the challenge of significant pension costs?*

I don't have enough information yet to determine whether or not the actuarial model takes into account those likely retirements, but you ask a very good question that should be addressed.

I would tell local school districts that, in my view, STRS is assuming an overly-optimistic investment return and that they should plan on higher costs than are currently projected.

3. *Based on the information you have, what do you believe is the best option for addressing the unfunded liability? On what basis did you reach your conclusion?*

In my view, in the absence of future earnings exceeding the assumed return, the unfunded liability should be addressed by increased contributions from employers and/or the state and not by reducing benefits to future teachers¹.

According to the STRS New Trustee Orientation on Actuarial Matters given to me earlier this month, benefits costs are supposed to be "related to the time benefits are earned and not to the time they are paid, and benefits costs are considered related to the time benefits were earned whenever Assets = Actuarial Obligation²." Obviously STRS is not observing those principles presently because our assets are less than our actuarial obligations, and those principles would be violated further if benefits for *future* teachers were reduced solely for the purpose of closing a deficit created by fulfillment of benefit promises made to *current* teachers. To charge future teachers for the costs of paying current teachers would be a generational

¹ Of course, the Legislature may decide to reduce benefits to new teachers for other reasons. But I believe we should not reduce benefits for future generations of teachers if the *sole* purpose of doing so is to close a deficit created by fulfillment of benefit promises made by the Legislature and school districts to the current generation of teachers. As a general rule I believe generations should not leave bills to future generations (unless they're also leaving assets capable of generating revenues with which to pay off those bills).

² See slides 25 and 32 of Book 2, CalSTRS New Trustee Orientation.

wealth transfer. (If anything, we're supposed to leave more *assets* to future generations, not more *liabilities*!)

4. *What criteria, priorities and issues should be considered by the board in developing an approach to address the unfunded liability?*

The first criterion should be to employ reasonable assumptions in order to generate a realistic assessment of the net unfunded liability and to provide school districts and governments with information for financial planning purposes. Benefits promises to teachers are unconditional contractual obligations that must be paid no matter how well or poorly we perform at STRS, and districts and governments responsible for those payments must get the money to pay those benefits from somewhere. As a result, the burden of any failure to close our unfunded liability is likely to fall on other governmental programs that will be at risk for cuts if cash is needed to meet these unconditional contractual obligations. So it's critical in my view that districts and governments be provided with information based on realistic assumptions so they can plan effectively rather than in a crisis atmosphere.

Most important in this regard, we should ensure that STRS employs conservative assumptions when determining the magnitude of the unfunded liability. In my opinion, the current assumption about its likely rate of return on assets (8%) is too optimistic. The legendary investor John Bogle suggests a reasonable rate would be in the 5-6% range. Another legendary investor, Warren Buffett, arrives at close to the same result based upon his prediction in 2001 that the long term stock market return will be in the 7% range and combined with the fact that STRS keeps roughly 25% of its funds in lower-yielding fixed income investments that earn more than 300 basis points less than its public equity portfolio. STRS's management argues that many other public pension funds assume 8%, so it should be ok for STRS to do so. But just because the "crowd" is doing something doesn't mean it's right. (As proof, look at Enron: just before it collapsed, 17 out of 18 analysts were rating it a "buy.") Also, STRS is much larger than the average fund, and in general larger funds have a more difficult time outperforming the market.

Obviously one of the consequences of assuming a more conservative yield assumption would be to enlarge the reported actuarial unfunded obligation. Based on information STRS has provided, I estimate that an assumed return of 7% instead of 8% would more than double the unfunded actuarial liability. But, no different than businesses and households, districts and others should base their plans on such realistically conservative assumptions.

Finally, as noted in item 3 above, I would hope another criterion adopted by the board in addressing the unfunded liability is that future generations not be handed the bill. Each generation should be responsible for its promises.

Proposed Changes to Teacher Retirement Benefits

1. *Altering public pension benefits would be a significant change in state policy. What factors do you believe should be considered by policymakers if they wish to make such a change? Which of these factors do you believe should carry the most weight in making such a determination and why?*

Hopefully my answers to 3 and 4 above render a lengthy answer here unnecessary. As I wrote above, I believe that benefits cuts for new teachers should *not* be factored into any plan to cover the unfunded liability. Conversion to a different plan for future teachers should be irrelevant to the board's mission of closing the unfunded liability. On the other hand, whether policymakers make changes to benefits for future teachers for reasons *other than* curing the unfunded liability is up to those policymakers, not to us.

2. *How would you determine the viability of either a hybrid plan or a defined contribution plan for the fund? How would you determine the viability of either plan for the future retirement security of new employees? Do you think that such a change is potentially more detrimental to female retirees?*

On the first question: I'm advised that, earlier this year (before I joined the board), an actuary reported to STRS that conversion to a defined contribution plan could be detrimental to the fund. If asked to determine the viability of such a plan, I would ask management for its recommendation and also seek the counsel of independent third parties.

On the second question: All else being equal, DB plans are usually the most attractive plan to employees in any field because DB plans guarantee retirement payments for life. So I would expect new teachers to strongly prefer DB plans.

On the third question: I don't know, but I'll hazard a guess: Since DB plans are usually better for *both* men and women, and because women tend to live longer than men, I would assume that not offering a DB plan would potentially be more detrimental to women.

3. *If there were a change in the retirement plans, do you believe that new public school teachers should receive benefits comparable to existing benefits? Why or why not?*

As I've written above, I believe that new school teachers should *not* have their benefits reduced for the sole reason of closing the deficit. If policymakers wish to offer different benefits to new teachers *for other reasons*, then that should be up to them, not to us. Our job should be to implement, not determine, the promises.

4. *Do you believe it would require an increase in the current teacher contribution rate of 8% to provide new employees with the same level of benefits [as current teachers receive]? How did you make that determination and, if the contribution were to increase, would you characterize that as a pay cut?*

The arithmetic seems clear that, at a reasonable assumed investment return, *someone* will have to contribute more than is now the case if new teachers are to get the same benefits being paid to current teachers. Who that *someone* should be is up to the policymakers to decide.

All else being equal, if employees have to pay more for something they now receive at a lower cost, in my view that's effectively a pay cut.

5. *What impact would a change to a hybrid plan have on the unfunded liability of the current system?*

As noted above, management has advised me that, earlier this year, an actuary reported that conversion to a DC plan would cause the current fund to have to shorten up its asset duration and thereby sacrifice yield (assuming a normal yield curve), which in turn would increase the present value of the unfunded liability. However, I've not seen a management or actuarial recommendation about the consequences of a hybrid plan, so at this point I don't have an answer to your question.

Corporate Governance

1. *What are your views on the California State Teachers' Retirement Board's corporate governance policy and its relationship to the board's fiduciary responsibility to its members?*

Our corporate governance policy is *vital* to the long-term health and earnings power of STRS and a critical component of our fiduciary responsibilities. STRS is so large that its long term performance is directly tied to the long term performance of US (and to some extent, foreign) corporations. So the better corporations are governed and perform, the better STRS is likely to perform. In short, corporate governance should be a *top* priority for STRS.

Unfortunately, STRS has been ineffective in this area, particularly for an investor of such size and importance. Consider executive compensation. In 1980, compensation of the average CEO was 42 times that of the average worker; by 2004, the ratio had climbed to 280 times that of the average worker! Global Crossing, Worldcom, Enron and other accounting-related disasters happened on STRS's watch. Similarly, STRS has been weak in influencing the sustainable-growth agendas of the vast majority of corporations, exposing shareholders to potentially lower returns. In my view, STRS has to do a *much* better job in this area, starting with measurement of its effectiveness. However, I don't believe STRS can be effective in this area until and unless it first has "clean hands" of its own and is in an ethical position from which to demand better behavior from others.

For example, at our last board meeting, the board (over my objection) voted to approve a \$300 million private-portfolio investment into a real estate venture that involved the following characteristics:

1. The transaction was discussed and approved in a *closed* session.
2. A political contribution was made by the transaction promoter to one of our board members, who expressed support and voted for the investment.
3. If the venture is successful, the promoter, who is putting up only \$6 million, stands to earn something like 10 times its investment while STRS, who is putting up \$300 million, stands to earn something less than 3 times its investment.
4. The transaction involves STRS in land development, potentially contributing to sprawl and other consequences, but to my knowledge we were not presented with a sustainability analysis.
5. The transaction involves significant financial risk due to the nature of the activity (land speculation and development just as the very hot housing market starts to cool) and the liberal use of debt leverage that will get paid off before we recover our equity.

In other words, STRS engaged in a process and approved a transaction that I'm virtually certain STRS would -- and should! -- condemn if conducted by one of our corporate investees. I.e., the process wasn't transparent; there isn't full disclosure; a board member accepted a gift from the vendor; extraordinarily excessive compensation is involved; sustainability wasn't even discussed; and the return is weak, especially when compared to the promoter's return and employment of leverage.

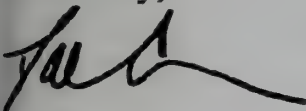
For our corporate governance program to be effective STRS must be "purer than pure." In my view, all of our meetings should be conducted in open session, we should never allow gifts or contributions from vendors to board members, we should not engage in transactions that allow for excessive compensation or do not meet sustainability standards, and we should not take undue risk with our capital or allow promoters to reap much greater returns on their capital than we receive.

Likewise, STRS should be setting a better example by using a conservative rate of return when determining and reporting its unfunded actuarial obligation. As we've all seen to our great dismay, many a corporation misled investors and employees by employing overly-optimistic pension return assumptions, thereby overstating earnings, understating net liabilities, and in some cases providing compensation to managements as a reward for earnings that never really existed.

Also, as in the case of corporations in which we invest, our board should have more independence from management. I have been extremely impressed with the quality of STRS's personnel, and I like them all. But STRS has justifiably criticized corporate boards for overly "cozy" relationships with management, and STRS should treat itself no differently. Accordingly, our board should be seeking more input from independent third parties without the participation of management.

Thank you for the opportunity to respond to your questions.

Sincerely,



David Crane

CALSTRS

HOW WILL YOU SPEND YOUR FUTURE?

California State Teachers'
Retirement System
Ed Derman
Plan Design and Communication
P.O. Box 15275, MS-2
Sacramento, CA 95831-0275

December 16, 2005

Ms. Nettie Sabelhaus, Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Ms. Sabelhaus:

On behalf of the California State Teachers' Retirement System (CalSTRS), I am providing our response to the questions in your letter dated October 18, 2005. Please note that references to employers in California include community college districts, county offices of education, and local school districts.

A brief description of teacher retirement would help explain some of the answers to your specific questions. All full-time public educators are required to participate in the Defined Benefit (DB) Program, which is administered by CalSTRS. In addition, part-time educators are permitted to participate in the DB Program. Those educators who participate in the DB Program also participate in the Defined Benefit Supplement (DBS) Program. About 50 percent of the part-time educators participate in the DB Program. The remaining part-time educators participate either in an alternative retirement program or in Social Security. The Cash Balance (CB) Benefit Program, which is also administered by CalSTRS, is an example of an alternative retirement program.

Questions were split apart and sub-labeled a, b, c to better relay our response to the question. Unless indicated otherwise, all the statistical information relates to DB Program members.

- 1a. *Please report how many teachers are retired and list the "typical" pension payment to retirees from urban districts compared with those from suburban and rural districts.*

As of June 30, 2004 the total number of retirees = 169,022

As of June 30, 2004 the average unmodified monthly benefit
for those retiring in 2003-04 = \$3,817

As of June 30, 2004 the average unmodified monthly benefit
for all retirees = \$2,254

Our Mission: Securing the Financial Future and Sustaining the Trust of California's Educators

DEC 16 2005

Ms. Sabelhaus

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CalSTRS maintains data on which specific employer the member retired from, but it does not indicate whether that district is an urban, rural or suburban district. CalSTRS staff was not able to find any independent data that would provide that information. Although the California Department of Education maintains categories of rural and urban areas, individual schools, and not the district as a whole, are categorized in that manner. It would take substantial staff effort to determine for each of the 12,000 members who retire in any one year whether their school district was urban, suburban or rural, to be able to fully answer this question.

- 1b. *If available, please provide comparison figures on the cost of living in these same regions together with any estimates of how much a teacher aged 25, 35, 45, 55 and 65 could expect to receive in pension payment at retirement.*

Since we could not identify how much is paid to members retiring in urban, suburban and rural areas, we are not providing a comparison of their relative cost of living. Based on the average years of service credit for active members age 25, 35, 45, 55, and 65, we have calculated an assumed allowance amount in today's dollars that they would likely receive, before any adjustment is made to that allowance to provide ongoing benefits to named beneficiaries when the member dies. We have assumed that the member would work continuously until the retirement age of 61.2, the average from the 2003-04 school year, and that they would earn a final compensation amount of \$5,891, also the average from 2003-04.

Active Member Age 2003- 04	Avg. Service Credit	Service Credit at Retirement	Unmodified Benefit
25	1.388	37.6	\$ 5,165.98
35	6.116	32.3	\$ 4,441.42
45	9.924	26.1	\$ 3,282.61
55	17.013	23.2	\$ 2,916.83
65	16.918	16.9*	\$ 2,391.93

*Assumes retirement age of 65.

Ms. Sabelhaus

12/16/2005

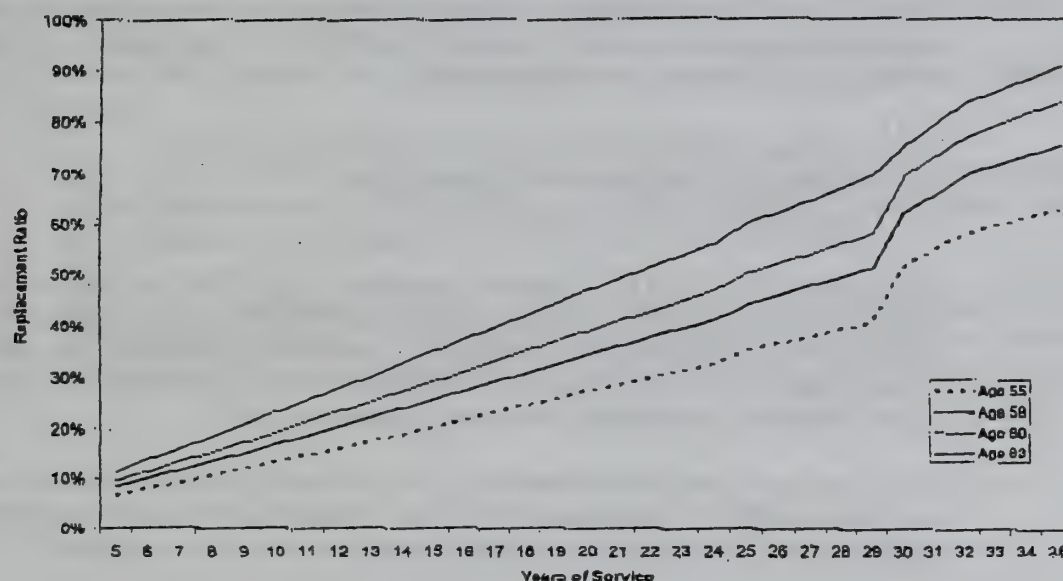
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For a real world perspective, we have included the following chart describing the average allowance received by members who retired in the 2003-04 school year who began teaching at age 25, 35, 45, 55 and 65.

Entry Age	Average Service Credit	Average Allowance Amount	Count
25	31.78	\$4,348.71	794
35	23.96	\$3,010.27	211
45	16.40	\$1,958.40	138
55	9.54	\$926.97	58
65	5.81	\$693.50	2

- 2a. *How does the pension income of a retiree compare with his/her salary as an active duty teacher?*

We refer to the percentage of salary replaced in retirement as the replacement ratio. The average replacement ratio for members retiring in 2003-04 was approximately 63 percent of the average final compensation. That ratio will vary depending on the member's age at retirement and years of service. The chart graphically shows the change in replacement ratio at specific ages and years of service credit. For example, a retired teacher age 55 with 30 years of service can expect to receive approximately 51 percent of their final compensation.



Ms. Sabelhaus

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- 2b. *Most teachers in California are not members of the Social Security program. How many?*

No active members of the DB Program or in alternative retirement plans pay into Social Security. As of June 30, 2004, there were 444,680 active DB Program members.

- 2c. *Please provide the findings of any studies or other forms of documented inquiry into the extent to which pensions under CalSTRS programs meet the needs of retired teachers.*

See Attachment A – Adequacy of CalSTRS Benefits report presented to the Teachers' Retirement Board on November 4, 2004.

- 3a. *Do retired teachers receive health care benefits in California? If so, how comprehensive are the benefits? For example, do they include dental, vision and long-term care coverage?*

CalSTRS does not administer a health benefits program for California teachers. The provision of health insurance, dental, vision and long-term coverage at retirement is a collective bargaining issue addressed by the employers (individual community college districts, county offices of education, and local school districts). Consequently, the availability and cost of health benefits to retired educators varies widely throughout the state. In order to qualify for the employer's retiree health coverage, most employees must have:

- Worked a certain number of years with the employer;
- Reached the employer's retirement age;
- Been hired prior to a certain date.

In October 2003, CalSTRS surveyed employers about the health benefits they provide to their active and retired employees. The purpose of the survey was to determine the pressures employers face in providing health benefits. See Attachment B – Results from Health Benefits Survey of Employers report presented to the Teachers' Retirement Board on February 4, 2005.

- 3b. *If they are not covered for health care, do teachers typically remain on active duty until they qualify for Medicare? Or, if they retire before becoming eligible for Medicare, do they typically pay their health care costs out of pocket?*

Most CalSTRS members retire between 60 and 62 years of age. If the employer does not provide health benefits, the member must pay their health care costs out of pocket. At age 65, a person becomes eligible for Medicare. CalSTRS administers the Medicare Premium Payment (MPP) Program, which pays the federal Medicare Part A (hospital) premiums for eligible retired DB Program members who are not eligible to receive Medicare Part A coverage premium-free, either through their own employment or through the employment of their spouse. The MPP Program currently is for those members who retired before July 1, 2006.

- 3c. *If so, please provide the findings of any available research regarding the impact of benefit packages on decisions to retire.*

We have not seen any research on the impact of the availability of health care on decisions to retire.

- 4a. *How much does a "typical" teacher contribute toward his/her own retirement program?*

Teachers who are members of the DB Program contribute 6 percent to their DB Program account and 2 percent to their DBS account.

Teachers who have elected to participate in the CB Program contribute 4 percent of pay to their account. For educators participating in other alternative retirement plans, the teacher contribution will vary by employer, and is as high as 7.5 percent.

- 4b. *What other sources contribute to retirement benefits, such as school districts and the state?*

Employers, including school districts, community college districts, and county offices of education contribute 8.25 percent and the State of California contributes 2.017 percent of pay from two years earlier to the DB Program.

Employers contribute 4 percent to those employee's accounts who participate in the CB Benefit Program. For educators participating in other alternative retirement plans, the employer contribution will vary by employer, and is as low as 0 percent.

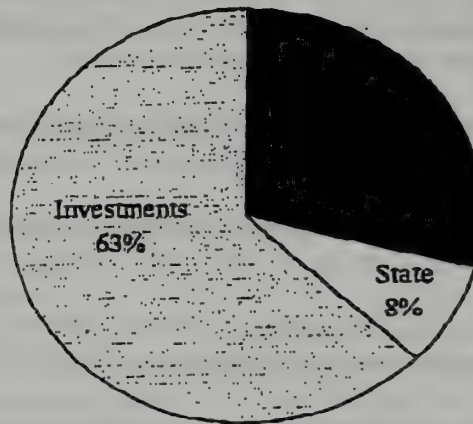
Ms. Sabelhaus

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4c. *What is the breakdown by percentage?*

As you can see from the chart below, since 1990-91, 63 percent of DB Program funding is due to investments, 15 percent is due to employer contributions, 14 percent is due to employee contributions and 8 percent is due to State contributions.



If we can be of further assistance, please do not hesitate to contact me at (916) 229-3714.

Sincerely,

Ed Derman
Deputy Chief Executive Officer

Attachments (2)

By messenger / fax (916-445-0596)

ATTACHMENT A
Senate Rules Committee
December 16, 2005

TEACHERS' RETIREMENT BOARD
BENEFITS AND SERVICES COMMITTEE

SUBJECT: Adequacy of CalSTRS Benefits

ITEM NUMBER: 5

ATTACHMENT(S): 1

ACTION:

MEETING DATE: November 4, 2004

INFORMATION: X

PRESENTER: Ed Derman

INTRODUCTION

In 1998, at the request of the Teachers' Retirement Board (Board), California State Teachers' Retirement System (CalSTRS) commissioned a Retirement Benefits Comparison and Adequacy Study to determine whether the benefits provided by CalSTRS under the Defined Benefit (DB) Program at that time were adequate, and how those benefits compared to those paid by systems in neighboring states. Since the 1998 study, CalSTRS has enhanced retirement benefits by permitting the conversion of unused sick leave to service credit for all members, increasing the age factor after age 60, adding a career factor and a longevity bonus and using one year final compensation for career educators. In addition, the Defined Benefit Supplement (DBS) Program was established to supplement the existing benefit. Finally, purchasing power maintenance has increased from 75 percent to 80 percent. The purpose of this study is to update where the DB Program stands with respect to the adequacy of benefits paid to its members, determine the extent to which those benefits permit members to maintain their standard of living after retirement, and compare the benefits paid by the DB Program to those paid by other retirement systems.

SUMMARY OF FINDINGS

Since the 1998 Benefit Comparison and Adequacy Study, CalSTRS has significantly increased the monthly retirement benefit for educators with at least 30 years of service or who retire after age 60, and provided other post-retirement benefits to assist members in maintaining their standard of living in retirement. As a result, the percentage of final salary replaced with the DB benefit alone has increased by 20 percent to 34 percent, with additional increases resulting from the DBS Program. CalSTRS, when compared with other retirement systems, pays among the highest monthly benefits at age 62 and age 65.

Based on the methodology used in the Georgia State studies, an appropriate target replacement ratio for CalSTRS members ranges from 81 percent to 88 percent. The current CalSTRS service retirement benefit, excluding the impact of DBS account balances and additional savings, is not sufficient to meet the target replacement ratio for members retiring with less than 32 years of

service. Members who consistently contribute a relatively modest amount to a supplemental savings plan, however, should be able to meet the target replacement ratio when combined with CalSTRS benefits. A survey of recently retired CalSTRS members indicates that California educators generally save for retirement at a higher rate than the rest of the population.

The availability of affordable health care can have a tremendous impact on the ability of a person to maintain his or her standard living in retirement. Members without employer-paid post-retirement health care can expect to see a 10 to 20 percent loss of discretionary income after 20 years due to ongoing increases in health care costs. Without post-retirement lifetime health care and a substantial supplemental savings account, retirement before age 60 may not be feasible for members in most cases, unless a member plans to engage in post-retirement employment.

Finally, although an annuity from the DBS Program account should help offset inflation in the future, CalSTRS post-retirement benefits (both the 2 percent annual adjustment and the purchasing power supplemental benefit payment) may not be sufficient to fully offset estimated rising health care costs or periods of high inflation 10 years after retirement.

A copy of the complete report is attached.

**CALIFORNIA
STATE TEACHERS' RETIREMENT SYSTEM**

**RETIREMENT BENEFITS COMPARISON AND ADEQUACY
STUDY**

NOVEMBER 2004

CALSTRS

HOW WILL YOU SPEND YOUR FUTURE?

INTRODUCTION

In 1998, at the request of the Teachers' Retirement Board, CalSTRS commissioned a Retirement Benefits Comparison and Adequacy Study to determine whether the benefits provided by CalSTRS under the Defined Benefit (DB) Program at that time were adequate, and how those benefits compared to those paid by systems in neighboring states. Since the 1998 study, CalSTRS has enhanced retirement benefits by permitting the conversion of unused sick leave to service credit for all members, increasing the age factor after age 60, adding a career factor and a longevity bonus and using one year final compensation for career educators. In addition, the Defined Benefit Supplement (DBS) Program was established to supplement the existing benefit. Finally, purchasing power maintenance has increased from 75 percent to 80 percent. The purpose of this study is to update where the DB Program stands with respect to the adequacy of benefits paid to its members, determine the extent to which those benefits permit members to maintain their standard of living after retirement, and compare the benefits paid by the DB Program to those paid by other retirement systems.

This study uses information comparable to that used in the 1998 study with some modifications. Information used for comparison is based on statistical data for those members who retired for service during the 2002-03 fiscal year.

DEFINITIONS

In this study, we use two terms throughout that indicate the extent to which benefits enable a retired member to maintain his or her standard of living. The first is **Replacement Ratio**, which is computed by dividing the annual retirement benefit by the final year's salary. The second is **Benefit Adequacy**, which is the extent to which the replacement ratio provided by the benefit enables the member to continue the pre-retirement standard of living.

THE BASICS OF CALSTRS BENEFITS

Currently, members of the DB Program, which include all full-time and most part-time educators, receive two benefits at retirement. The first is the monthly DB benefit. This benefit is based on the member's age, years of service credit and final compensation at the time of retirement. That amount is increased by a longevity bonus if the member has at least 30 years of service credit prior to 2011. This monthly benefit is increased by 2 percent of the original benefit each year as a hedge against inflation. In addition, if inflation has eroded the purchasing power of the current benefit to a level that is less than 80 percent of the value of the original benefit, the member receives a quarterly supplemental benefit that brings the current benefit up to the 80 percent level.

DBS is the second benefit program, and was established to provide supplemental benefits to members of the DB Program. Beginning in January 2000, 25 percent of a member's retirement contributions were redirected to the DBS Program. This redirection of member contributions to the member's DBS account will remain in effect until January 1, 2011. Additional member and employer contributions are added to a member's DBS account for compensation earned from service in one school year that exceeds 1,000 year of service credit. At retirement, the DBS

account may be distributed either as a lump-sum distribution, or, if the member has at least \$3,500 in his or her DBS account, as an annuity, or both.

Although there were no annuities paid during the 2002-03 fiscal year, in the future, DBS supplemental accounts need to be included in determining the member's overall retirement income. For example, an individual contributing 25 percent of his or her contributions to the DBS account for 10 years beginning in 2001 could receive an annuity of approximately \$150 per month at age 65. That amount would increase to the extent that service is performed in excess of 1,000 year of service credit in a school year. The following table shows examples of the monthly annuity distributions that are paid based on DBS account balances.

Monthly DBS Single Life Annuity with a Cash Refund				
DBS Account Balance	Age at Retirement			
	Age 50	Age 55	Age 60	Age 65
\$3,500	\$24	\$25	\$27	\$28
\$5,000	\$35	\$36	\$38	\$41
\$7,500	\$53	\$55	\$57	\$61
\$10,000	\$70	\$73	\$77	\$82
\$15,000	\$105	\$110	\$115	\$123
\$20,000	\$141	\$146	\$154	\$164
\$25,000	\$176	\$183	\$192	\$205

In addition, DB members can supplement their retirement benefits by investing in tax-deferred retirement vehicles, predominantly under Section 403(b) of the Internal Revenue Code. In a 403(b) plan, the member's income is reduced while working, up to a maximum amount specified in federal law, and that amount is invested as directed by the member. No taxes are owed on the amount contributed and on the earnings from investing those contributions until payments from the accounts are made, after retirement. CalSTRS offers a 403(b) plan to school employees, called the Voluntary Investment Program.

ASSUMPTIONS USED TO EVALUATE BENEFIT ADEQUACY

Retirement Ages and Service Credit Years Used for Comparisons and Adequacy

The 1998 Retirement Benefit Comparison and Adequacy Study that was presented to the Board looked at replacement ratios and benefit comparisons at age 60 with 25 years of service credit and age 65 with 30 years of service credit. The current study looks at retiring educators at each year of age from age 60 through age 63, and each year of service from 30 years of service through 35 years of service. The replacement ratio paid to members after age 63 does not change, given the same final compensation and years of service. Using these different ages and years of service shows how the benefit enhancements enacted in 1998 and 2000 have substantially increased retiring member benefits since the 1998 study. It also incorporates the average age of retirement for members retiring in 2002-03, which is 61.2 years of age.

Final Average Salary/Final Compensation

In calculating final average salary, the 1998 study used a final salary of \$47,500 for age 60 and a final salary of \$57,800 for age 65. The final salary for age 65 was based on an assumed 4 percent annual increase in salary from age 60 to age 65. For the current study, we used the actual average final compensation for members retiring in the 2002-03 fiscal year with at least 30 years of service credit at each age from age 60 through age 63. The average final compensation for all retiring educators in 2002-03 is \$5,807 or a final average annual salary of \$69,684.

Supplemental Retirement Savings

Both the 1998 study and the current study assume that members would save for retirement, and includes replacement ratios with and without member contributions to a 403(b) program. Because there was limited 403(b) information available in the 1998 study to determine the average member contribution rate to a 403(b) account, it was assumed that the average contribution rate was around 3 percent with an 8 percent return rate. For the 2004 study, CalSTRS sent a survey to approximately 9,100 educators who retired from CalSTRS in June and July 2003, asking each individual whether they made contributions to a 403(b) plan; the average percentage of gross salary per month contributed; and the total number of years the contributions were made. Of the members surveyed, 4,120 (45 percent) responded. The survey indicated that:

- 70 percent of the surveyed educators contributed to a 403(b) plan during their career
- The average contribution was 11 percent of gross salary
- The average contribution period was approximately 17 years
- The average monthly distribution was \$765
- The average length of the distribution was for 21 years
- The average lump sum distribution was about \$70,000
- A majority of retired educators who will take a distribution at a later date will do so to pay for future health care costs or when required by federal law to take a distribution at age 70 ½.

For purposes of the study, we assumed that members contributed 5 percent of their salary to a 403(b) plan. This level of investment is appropriate because CalSTRS members do not participate in Social Security, which saves them 6.2 percent of salary. In addition, a combined 8 percent contribution to CalSTRS and 5 percent contribution to a 403(b) plan, for a combined contribution of 13 percent, is consistent with the total 13.2 percent contribution paid by classified school employees to CalPERS and Social Security. Although a CalPERS school employee would pay the 13.2 percent contribution throughout his or her career, the calculations for a CalSTRS member were based on a member contributing to a 403(b) plan only for the first 15 years of employment.

REPLACEMENT RATIOS AND BENEFIT ADEQUACY

At the time that the 1998 Benefit Comparison and Adequacy Study was formulated and presented to the Board, university research conducted in 1993 by Georgia State University was the basis of comparison to the 1998 CalSTRS benefit. Replacement ratios were used as a measure of the adequacy of the CalSTRS benefit. As indicated earlier, the replacement ratio is computed by dividing the annual retirement benefit by the final year's salary. The survey data that was used studied the retirement needs and adequacies at age 65. Retirement adequacy was

defined as the amount of benefit needed to continue the pre-retirement standard of living. The results of the Georgia State Study showed a range of replacement ratios at age 65 from 76 percent to 85 percent depending on the level of income at retirement. Based on various assumptions, the 1998 study determined that the percentage of income necessary for retirement income adequacy was 70 to 75 percent of final salary at age 60 and 80 to 85 percent at age 65. The 1998 study found no survey data that specifically defined the needs and adequacies for age 60. It was therefore assumed that a range of 70 to 75 percent at retirement age 60 should be the target for retirement adequacy. Study findings showed that the CalSTRS retirement benefit was 59 percent of final salary at age 60 with 25 years of service and 68 percent at age 65 with 30 years of service.

This current study uses the 2001 Georgia State University study (the most recently conducted study) as a basis to define replacement ratios for the CalSTRS retirement benefit. The university study concluded that adequate replacement ratios for 65 year old retirees are between 76 percent and 87 percent depending on an individual's retiring income and marital status. This is a 4 to 8 percent increase of required income since a follow up 1997 study conducted by Georgia State University. Just as in the 1993 and 1997 Georgia State studies, there is no single definitive replacement ratio for all retirees. Many factors, such as marital status, retirement income, region of residence and supplemental savings, make it difficult if not impossible to define the ideal replacement ratio. However, just as in the 1998 Benefit Comparisons and Adequacy study, we believe that reasonable assumptions can be formulated for CalSTRS members that would allow the identification of appropriate replacement ratios. Based on similar formulas used in the Georgia State study, we calculated a range of the percentage of salary paid to CalSTRS members that, if paid to a member in retirement, would permit the member to maintain in retirement the same level of income, net of employment-related expenses, the member earned while employed. These ratios range between 81 percent and 88 percent, which are at the higher end, but consistent with the findings of the Georgia State study. This range assumes that health care will be paid for by the employer after retirement for life.

Although the terms replacement ratio and benefit adequacy are related, the phrase "benefit adequacy" must consider more than just the CalSTRS retirement allowances and supplemental savings. There are other age-related and economic factors that must be accounted for to determine the sufficiency of income for retiring educators. We did not encounter a single study, commentary, or opinion that matched the type of benefits CalSTRS retiring educators would receive at retirement, reflecting the lack of a Social Security benefit. However, we did find expert commentaries and research conclusions that addressed specific subjects regarding retirement adequacy presently and in the future. One recurrent observation by most experts and researchers contradicted the old axiom espoused by financial planners that an individual will need at least 75 percent of their pre-retirement salary in order to maintain their same standard of living in retirement. In an editorial published in the April 2002 magazine *Plan Sponsor*, editors warned that the chasm between retirement expectations and the reality of sufficient retirement savings is probably wider than we think. The article stated that

- "Most financial planning models employed today have certain imbedded assumptions;
- Your tax bracket in retirement will be less than it is today.

- You will not need 100 percent of your preretirement income to maintain the same lifestyle in retirement.
- You will spend money on the same kinds of things you did prior to retirement.

First, as a number of diligent savers are finding out, a retiree's post retirement income actually can exceed their preretirement paycheck. Particularly by the time one reaches 70, the current minimum required distribution law serves to flush a fair amount of retirement savings back into the taxable realm-whether the retiree needs that money to live on or not. Ironically, that may create situations where the current system forces workers to liquidate retirement savings decades before they actually are needed to support healthcare expenses. The plain fact is that, with so many traditional retirement savings vehicles closed to the 70-year old, personal savings efforts are frequently discarded-or-abandoned in favor of vehicles that are not tax-advantaged. The combination of these phenomena, and the tendency of both federal and state governments to tinker with tax rates over an extended period of time-means that retirees no longer can safely assume that they will enjoy a reduced tax burden in retirement."

These same comments and related opinions were echoed by other respected pension and retirement researchers. The 2001 Georgia State study noted that new data showed only a relatively minor decrease in post-retirement spending patterns. The 2004 annual Retirement Confidence Survey, a comprehensive study by the Employee Benefit Research Institute of the attitudes and behaviors of American workers and retirees towards saving, retirement planning, and long-term financial security, found that some workers may be overly optimistic about their standard of living in the years immediately after their retirement. About two-thirds of workers believe that they will be at least as comfortable in the years immediately after retirement as they were before retirement. While job-related expenses decline or are eliminated in retirement, other expenses remain constant (such as housing, living expenses, and property taxes) and may rise (such as leisure and medical expenses).

Olivia S. Mitchell, executive director of Wharton's Pension Research Council notes: "It may be a good idea for people to assume that they will need the same level of income during their retirement years that they need now. A lot of people don't have very good information about what their expenses will be during retirement. We know from our research at the Pension Research Council that there's a substantial underestimation of the need for long-term care and nursing home insurance. People also don't understand what medical costs may be in retirement. And many people don't focus enough on the risk posed by inflation. We haven't had a lot of inflation lately, but even a low rate over 30 years of retirement can erode one's nest egg."

Other studies have shown that people are not properly prepared for retirement. In a May 2003 survey conducted for MetLife, people aged 56 to 65 were asked a series of questions designed to test their knowledge of retirement and income-planning statistics. When asked, "What are the greatest financial risks facing retirees?" only 23 percent correctly answered longevity risk. Another question asked: "An individual who reaches age 65 has a life expectancy of age 85. What are the chances he or she will live beyond that age?" Only 37 percent gave the correct answer, which is 50 percent.

The table below shows the replacement ratios resulting from the DB Program for career members with different retirement ages and years of service, based on the average final compensation for members retiring at that age. Including DBS benefits would increase the replacement ratios by about 1 to 1.5 percentage points for every \$10,000 in DBS funds at retirement.

Age	Years of Service	Final Monthly Salary	Monthly Allowance	Replacement Ratio
60	30	\$6,336	\$4,382	69%
60	31	\$6,336	\$4,621	73%
60	32	\$6,336	\$4,861	77%
60	33	\$6,336	\$5,000	79%
60	34	\$6,336	\$5,139	81%
60	35	\$6,336	\$5,279	83%
61	30	\$6,411	\$4,682	73%
61	31	\$6,411	\$4,931	77%
61	32	\$6,411	\$5,180	81%
61	33	\$6,411	\$5,330	83%
61	34	\$6,411	\$5,479	85%
61	35	\$6,411	\$5,629	88%
62	30	\$6,473	\$4,860	75%
62	31	\$6,473	\$5,116	79%
62	32	\$6,473	\$5,371	83%
62	33	\$6,473	\$5,527	85%
62	34	\$6,473	\$5,682	88%
62	35	\$6,473	\$5,837	90%
63	30	\$6,597	\$4,950	75%
63	31	\$6,597	\$5,208	79%
63	32	\$6,597	\$5,467	83%
63	33	\$6,597	\$5,625	85%
63	34	\$6,597	\$5,783	88%
63	35	\$6,597	\$5,942	90%

The replacement ratios paid to members who retire older than age 63 are the same as those who retire at age 63 and have identical final compensation and years of service.

The following table shows the replacement ratios for these same members, assuming that they invested 5 percent of their salary in a 403(b) plan for the first 15 years of their career, beginning at age 25, and earn a rate of return equal to 5 percentage points above the rate of inflation.

Age	Years of Service	Final Monthly Salary	Monthly Allowance	403(b) account*	Replacement Ratio
60	30	\$6,336	\$4,382	\$222	73%
60	31	\$6,336	\$4,621	\$222	76%
60	32	\$6,336	\$4,861	\$222	80%
60	33	\$6,336	\$5,000	\$222	82%
60	34	\$6,336	\$5,139	\$222	85%
60	35	\$6,336	\$5,279	\$222	87%
61	30	\$6,411	\$4,682	\$238	77%
61	31	\$6,411	\$4,931	\$238	81%
61	32	\$6,411	\$5,180	\$238	85%
61	33	\$6,411	\$5,330	\$238	87%
61	34	\$6,411	\$5,479	\$238	89%
61	35	\$6,411	\$5,629	\$238	91%
62	30	\$6,473	\$4,860	\$255	79%
62	31	\$6,473	\$5,116	\$255	83%
62	32	\$6,473	\$5,371	\$255	87%
62	33	\$6,473	\$5,527	\$255	89%
62	34	\$6,473	\$5,682	\$255	92%
62	35	\$6,473	\$5,837	\$255	94%
63	30	\$6,597	\$4,950	\$274	79%
63	31	\$6,597	\$5,208	\$274	83%
63	32	\$6,597	\$5,467	\$274	87%
63	33	\$6,597	\$5,625	\$274	89%
63	34	\$6,597	\$5,783	\$274	92%
63	35	\$6,597	\$5,942	\$274	94%

* Assumes account balance used to purchase additional CalSTRS service credit

This current study indicates that, considering only the DB Program benefit, a CalSTRS member retiring with less than 32 years of service would fall short of the recommended replacement ratios of 81 to 88 percent. However, with the addition of supplemental savings, most retiring career educators would have enough retirement income to exceed the recommended replacement ratios. The age at which a member begins investing in a supplemental retirement savings plan can have a major impact on the amount available at retirement. For example, if the member

started investing at age 30, rather than age 25, the impact of the supplemental investing on the monthly retirement benefit would be reduced by 22 percent.

1998 Benefit Adequacy versus 2004 Benefit Adequacy

The table below compares the replacement ratios currently being paid by the DB Program (that is, excluding DBS benefits) to those paid under the program as it existed in 1998, assuming the same final year's salary, and assuming 4 percent annual salary increases for each of the two years prior to retirement.

Age	Years of Service		Replacement Ratio (1998)	Replacement Ratio (2004)	Percentage Increase
60	30		58%	69%	20%
60	31		60%	73%	22%
60	32		62%	77%	25%
60	33		63%	79%	24%
60	34		65%	81%	24%
60	35		67%	83%	24%
61	30		58%	73%	27%
61	31		60%	77%	29%
61	32		62%	81%	31%
61	33		63%	83%	31%
61	34		65%	85%	31%
61	35		67%	88%	30%
62	30		58%	75%	30%
62	31		60%	79%	33%
62	32		62%	83%	35%
62	33		63%	85%	34%
62	34		65%	88%	34%
62	35		67%	90%	34%
63	30		58%	75%	30%
63	31		60%	79%	32%
63	32		62%	83%	35%
Age	Years of Service		Replacement Ratio (1998)	Replacement Ratio (2004)	Percentage Increase
63	33		63%	85%	34%
63	34		65%	88%	34%
63	35		67%	90%	34%

As is seen above, the changes made to the DB Program since the 1998 study, even disregarding the impact of the DBS benefit, has had a dramatic effect on a member's ability to replace employment compensation in retirement. The reasons for this are that

- The percentage of final salary paid per year of service now increases after age 60, which it did not do in 1998. As a result, in 1998, the replacement ratio didn't change for a given number of years of service and final compensation, even if the member retired after age 60. Under the current DB Program, the replacement ratio does increase for retirements after age 60.
- Members with at least 30 years of service now receive an additional increase in the percentage of final salary
- Members with at least 30 years of service also receive a longevity bonus
- Members with at least 25 years of service have final compensation determined based on 12 consecutive months of the highest average annual earnable salary for a school year, rather than the highest 36 consecutive months

It should be noted that the adequacy of the current benefits paid by CalSTRS indicated above results to a large degree to the enhancements paid to members with at least 30 years of service. Such members generally receive an addition to their age factor, as well as a dollar increase in the monthly benefit. If these enhancements were not paid, the replacement ratio would be significantly lower. For example, the replacement ratio of the CalSTRS benefit paid to a 60 year old with 30 years of service, who receives both the career factor and the longevity bonus, is 69 percent, while the replacement ratio of the benefit paid to a 60 year old with 29 years of service is only 58 percent. About 87 percent of the difference between the replacement ratios paid to the two members is attributable to the career factor and the longevity bonus. It should also be recalled that the longevity bonus has a limited existence. Only members with at least 30 years of service by 2011 will receive a longevity bonus. On the other hand, all future members will accrue significantly larger DBS balances as they work summer school and perform other excess service and therefore earn increased DBS retirement benefits throughout their career.

The increase in benefits resulting from the enhancements enacted since 1998 that is paid to a member retiring with less than 30 years of service is more limited. For example, a member retiring at age 60 with 29 years of service in 2004 will receive a monthly DB benefit that is only 4 percent larger than would have been paid in 1998, due to the change in how final compensation is calculated. Members retiring after age 60 will see somewhat larger increases. If a member retires at age 63 or older with 29 years of service, the monthly benefit will be 25 percent larger than would have been paid to a similar member retiring in 1998, due to both the change in calculating final compensation and the increase in the age factor after age 60. Similarly, the replacement ratio of the benefit paid to a member who retired in 1997-98, with an average age of 60.8 years and 26.8 years of service credit, is about 53 percent. The average member who retired in 2002-03 was 61.2 years old and had 27.9 years of service credit. The replacement ratio for that average member from benefits paid from the DB Program was slightly over 63 percent, an increase of about 19 percent, due in part to the increased age factor and the change in how final compensation is determined. Although ad-hoc and other increases paid to pre-1999 retirees since their retirement help improve the standard of living of previously retired members, it is clear that

the retirement benefits paid by CalSTRS to those who retired before 1999 are less adequate than those being paid to more recently retired members.

CHANGES IN ECONOMIC CONDITIONS AFTER RETIREMENT

It is difficult to categorically define exactly what an ideal replacement ratio should be for each retiring educator. However, if we examine specific post-retirement factors that retiring educators will encounter once their career has ended, and incorporate the impact of these factors with the CalSTRS retirement allowance an individual receives, reasonable assumptions about retirement adequacy and a range of replacement ratios can be determined. There are three factors of particular importance to CalSTRS members: inflation, health care and elder care.

Inflation

The rate of inflation in California over the last 20 years averaged around 3.25 percent per year and approximately 2.7 percent over the last 10 years. Assuming that the rate of inflation averages 3 percent per year, a member with a retirement allowance of \$4,860 per month in 2003 would have to make up \$700 per month in the year 2013 and \$2,000 in the year 2023 to maintain the same purchasing level at retirement. The following chart shows how inflation can erode the overall retirement allowance by a member retiring in 2003 with a retirement allowance of \$4,860 per month.

Year	Annual Adjustment	Allowance plus Adjustment	Benefit Needed to Offset		
			2 Percent Inflation	3 Percent Inflation	4 Percent Inflation
2003	\$0	\$4,860			
2004	\$97	\$4,957	\$4,957	\$5,006	\$5,054
2007	\$389	\$5,249	\$5,261	\$5,470	\$5,686
2010	\$680	\$5,540	\$5,583	\$5,977	\$6,395
2013	\$972	\$5,832	\$5,924	\$6,531	\$7,194
2015	\$1,166	\$6,026	\$6,164	\$6,929	\$7,781
2020	\$1,652	\$6,512	\$6,805	\$8,033	\$9,467
2023	\$1,944	\$6,804	\$7,222	\$8,778	\$10,649

The real value of a retirement plan's benefit is measured by its purchasing power during the retirement years as well as by its tax treatment. Each of these factors affects the value of benefits after retirement. For example, the CalSTRS retirement benefit, including the purchasing power benefit, is indexed to changes in the California Consumer Price Index to protect against the erosion of the benefit's value over time, through the quarterly purchasing power benefit. Retirement benefits provided by a number of large public employee plans have some inflation protections built into the design of the plan and may also be partially or, in some cases, wholly exempt from state income taxes. The method of retirement income inflation protection afforded by each plan and the tax treatment of retirement benefits for state income tax purposes vary widely among plans and taxing jurisdictions. Such differences may also be affected by or related to plan designs that take into account Social Security benefits or their absence.

Cost of living adjustments represent an attempt to check purchasing power losses due to inflation. With some plans cost of living adjustments are wholly discretionary. In these cases, ad hoc increases may be granted from time to time by the state legislature. Such increases may apply to retirees equally across the board, or larger adjustments may be directed to longtime retirees for whom the retirement benefit's purchasing power has declined by the greatest amount. For example, in 2000, CalSTRS sponsored legislation for an ad hoc increase to a benefit recipient's monthly allowance beginning with a 1 percent increase for those individuals who had a benefit effective date prior to January 1, 1998, to a 6 percent increase for benefit recipients with a benefit effective date prior to January 1, 1975.

Another alternative used by some plans relies on additional payments based on the investment experience of the plan. Under these conditions, no adjustment takes place unless the plan has a sufficiently favorable investment experience. For example, the Wisconsin Retirement System provides for supplemental adjustments in benefits when investment earnings in excess of the actuarially assumed rate produce a surplus in the annuity reserve.

Most public plans either automatically provide for a fixed rate of adjustment (usually 2 or 3 percent) or a floating rate tied to changes in the Consumer Price Index (CPI) typically with a 3 percent ceiling on the rate of adjustment. Not all of the plans who use a fixed rate apply such rates in the same manner. Some systems, such as CalSTRS, provide for adjustments on the original benefit, while others provide for compounded percentage adjustments. Most of the systems that compound the adjustment do so annually while some systems may employ an automatic adjustment on the low end of the typical range, but also add excess investment provisions as a supplement. Other systems use a multipart automatic adjustment, with a small fixed amount such as 1 percent being guaranteed and further adjustment based on changes in the CPI up to a specified maximum.

The overall value of retirement benefits can also be affected by their treatment under varying state income tax laws. The income from a majority of public plans is partially or totally subject to state income tax. Seven states have no state income tax while some states have exempted public retirees from paying state income taxes on their retirement benefit.

The CalSTRS post-retirement benefits includes an annual two percent benefit adjustment and a unique inflationary safeguard in the form of annual supplemental payments in quarterly installments when purchasing power falls below 80 percent of the original allowance. Other than CalPERS which has a 75 percent purchasing power feature, we did not find any public pension system that has a purchasing power supplemental payment. This purchasing power plan feature compares favorably with other state plans that require state income tax. States that are fully exempt from paying state income tax and have compounded COLAs have the highest overall value. A listing of post-retirement benefit packages based on annual cost of living increases and state income tax, ranked by order of the after-tax benefit paid to a member after 20 years of retirement, is provided in Appendix A.

Health Care

In February 2004, CalSTRS staff presented to the Board results from an employer survey regarding health benefits provided to active and retired employees. Survey findings revealed that approximately 57 percent of district employees must pay all their health insurance premiums at age 65. Almost two-thirds of the districts reported that health insurance premiums increased less than 20 percent, whereas 30 percent of the districts reported a 20 to 29 percent increase in premiums during the 2001 and 2002 fiscal years. Some districts expect employees to pay a higher share of their health care premiums in the future. This will be accomplished by capping the districts' premium contributions. Another strategy to control the districts' share of health care premium will be to increase the employees' out-of-pocket expenses through higher co-payments for doctor visits and prescription drugs.

These findings are consistent with a recent Kaiser Family Foundation and Hewitt Associates poll, which found that one in 10 firms dropped subsidized health benefits for future retirees in the last year while another 20 percent are likely to follow suit over the next 36 months. Of the companies surveyed, 71 percent made retirees pay more toward health premiums in the last year while 86 percent say they'll do so over the next three years. For new retirees, premium payments increased by 20 percent in 2002-2003 for pre-65 retirees and 18 percent for retirees age 65 and older. Among surveyed employers, the total cost for employers and retirees for health benefits increased by an estimated 13.7 percent from \$18.1 billion in 2002 to an estimated \$20.6 billion in 2003, to provide coverage to retirees and their dependents. The Kaiser report noted that between the spring of 2002 and spring of 2003, monthly premiums for employer sponsored health insurance rose 13.9 percent, the third consecutive year of double premium increases and the highest premium increase since 1990.

In a report released by Fidelity Investments following the firm's *Changing Benefits, Critical Decisions: The Health Benefits and Behavior Study*, it was estimated that health premiums in 2004 are expected to increase 7.4 percent. Employees will pay an average of \$1,233, up from \$1,107 last year. Combining both the employee share of premium and expected out-of-pocket cost, the total amount employees will pay for their health care in 2004 rises to \$2,450. In a related report by Fidelity that addresses saving for health care, it was estimated that a 65-year old couple retiring today, with no access to an employer sponsored health care plan, needs an estimated \$175,000 to fund out-of-pocket medical expenses in retirement.

A February 2003 *Issue Brief* (study) entitled *Retiree Health Benefits: Savings Needed to Fund Health Care in Retirement* sponsored by the Employee Benefit Research Institute (EBRI), found that an individual with access to employment-based health benefits in retirement to supplement Medicare will have needed to save a present value of between \$37,000 and \$750,000 to retire at age 65 in 2003. The range is determined by various assumptions regarding life expectancy, premium levels, annual changes to premiums, and out-of-pocket expenses. An individual without access to employment-based health benefits who instead purchases Medigap coverage will have needed to save between \$47,000 and almost \$1.5 million, to retire at 65 in 2003.

In a February 2004 *Issue Brief*, Professor Jack Van Derhei, Temple University, research director of the EBRI Fellow Program noted that "The thing that would probably have the single biggest determination on whether or not the amount of money you retire with turns out to be sufficient is whether or not you have one of the potentially catastrophic health care expenses, things like home health care and nursing home care." The *Issue Brief* (No. 266) noted that fewer retirees are going to have health insurance from a former employer and Medicare is projected to be severely underfunded once the baby boomer generation starts retiring. All of this indicates more insecurity for future retirees about their ability to cover health expenditures in retirement. The following chart demonstrates the ongoing health care cost for an individual with no post-retirement health care or no employer health care after age 65. The increase in health care assumes a 10 percent increase in Medicare premiums and a seven percent yearly increase in health care costs (A seven percent yearly increase was used based on the assumption that future costs will be tempered with federal legislation and low periods of inflation that will average no more than seven percent over the next 20 years.)

Costs in 2003	Costs in 2023
Medicare Part B premium of \$59 per month	Medicare Part B premium of \$397 per month
\$700 annually	\$4,764 annually
Other health care premiums of \$300 per month, plus out-of-pocket costs (for co-pays, prescription drugs and miscellaneous health care expenses excluding dental and vision care) of \$100 per month	Premiums and out of pocket costs (for co-pays, prescription drugs and miscellaneous health care expenses excluding dental and vision care) of \$1,061 per month
\$4,800 annually	\$12,732 annually

Elder Care

Recent research shows that 6 out of 10 retired individuals will need some type of long term care. Home health care, assisted living and nursing home care costs are expensive and can have a major effect on an individual's finances. One year in a California nursing home can cost \$50,000 or more. According to CalPERS, "long-term care can easily exceed \$130,000 in California, due to the fact the average length of stay in a nursing home for adults over age 65 is 2.6 years." We have factored in elder care or long term care as a post-retirement cost that could have an impact on an individual's retirement allowance. To do this, we assumed that each retiring educator in our study categories purchased the CalPERS Long-Term Care Program 5 years prior to retirement.

Retirement Age	Age at the Time of Purchase	Monthly Premium at the Time of Purchase	Current Monthly Premium	Average Annual Rate of Increase
Age 60	Age 55	\$104	\$135	5.4%
Age 62	Age 57	\$117	\$148	4.8%
Age 65	Age 60	\$141	\$172	4.1%

We then compared the initial purchase monthly premium to the rate paid at retirement and calculated an ongoing average increase of five percent annually.

Future Monthly Long Term Care Premiums Assumed 5 Percent Annual Increase			
Year	Member Age 60	Member Age 62	Member Age 65
2003	\$135	\$148	\$172
2005	\$149	\$163	\$190
2010	\$190	\$208	\$242
2013	\$220	\$241	\$280
2015	\$242	\$266	\$309
2020	\$309	\$339	\$394
2023	\$358	\$393	\$456

RETIREMENT BENEFIT COMPARISONS

We compared CalSTRS' retirement benefit with other state and local retirement systems that were also used in the 1998 study. The comparisons show retirees in CalSTRS and other systems retiring at age 60 with 30 years of service credit; age 62 with 32 years of service credit; and, age 65 with 35 years of service credit. The same 2003 final compensation was used for all retiring individuals. The calculation assumes that there were no salary increases during the final compensation period. Because different retirement systems use different definitions of final compensation, if a person was receiving increases in compensation toward the end of his or her career, the replacement ratio of those retirement systems that have longer final compensation periods may be lower than indicated. For example, all the California plans base final compensation on the highest 12 consecutive months; the other plans shown base final compensation on either the highest 24 or 36 consecutive months.

Retirement System	Age 60 Ratio	Age 62 Ratio	Age 65 Ratio
CalSTRS	69%	83%	90%
CalPERS Classified School*	69%	78%	88%
LA City Fire and Police—Tier 3	70%	70%	70%
San Francisco Safety—Tier 2	65%	70%	70%
LA City Water and Power	65%	69%	76%
Long Beach Miscellaneous—Tier 2*	78%	83%	91%
Nevada PERS	72%	78%	89%
Rhode Island Teachers	63%	69%	77%
Washington Teachers*	58%	63%	69%
Oregon PERS*	48%	51%	56%
Pennsylvania School*	72%	77%	88%

*Service covered by Social Security. Social Security adds an additional 22 percent at age 62 and 29 percent at age 65 to the replacement ratio

The table indicates that, for the scenarios calculated, the benefit paid by CalSTRS generally was higher than those paid by other retirement systems. For those retirement systems whose service also is covered by Social Security, the total amount of income replaced after retirement is higher than at CalSTRS, but this would be offset if CalSTRS members invested the savings from not participating in Social Security in a supplemental retirement savings program, such as a 403(b) plan.

SUMMARY OF FINDINGS

Since the 1998 Benefit Comparison and Adequacy Study, CalSTRS has significantly increased the monthly retirement benefit for educators with at least 30 years of service or who retire after age 60, and provided other post-retirement benefits to assist members in maintaining their standard of living in retirement. As a result, the percentage of final salary replaced with the DB benefit alone has increased by 20 percent to 34 percent, with additional increases resulting from the DBS Program. CalSTRS, when compared with other retirement systems, pays among the highest monthly benefits at age 62 and age 65.

Based on the methodology used in the Georgia State studies, an appropriate target replacement ratio for CalSTRS members ranges from 81 percent to 88 percent. The current CalSTRS service retirement benefit, excluding the impact of DBS account balances and additional savings, is not sufficient to meet the target replacement ratio for members retiring with less than 32 years of service. Members who consistently contribute a relatively modest amount to a supplemental savings plan, however, should be able to meet the target replacement ratio when combined with CalSTRS benefits. A survey of recently retired CalSTRS members indicates that California educators generally save for retirement at a higher rate than the rest of the population.

The availability of affordable health care can have a tremendous impact on the ability of a person to maintain his or her standard living in retirement. Members without employer-paid post-retirement health care can expect to see a 10 to 20 percent loss of discretionary income after 20 years due to ongoing increases in health care costs. Without post-retirement lifetime health care and a substantial supplemental savings account, retirement before age 60 may not be feasible for members in most cases, unless a member plans to engage in post-retirement employment.

Finally, although an annuity from the Defined Benefit Supplement Program account should help offset inflation in the future, CalSTRS post-retirement benefits (both the 2 percent annual adjustment and the purchasing power supplemental benefit payment) may not be sufficient to fully offset estimated rising health care costs or periods of high inflation 10 years after retirement.

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APPENDIX A: COMPARISON OF ANNUAL COST OF LIVING INCREASES AND STATE INCOME TAX

In our comparison we made the following assumptions:

- Initial benefit: \$4,000 per month
- Retirement age: Age 65
- Rate of annual inflation: 2.5 percent annually
- Annual ad hoc adjustment (for those plans without automatic adjustments): 2.0 percent

State	Annual Benefit Adjustment	State Income Tax Treatment	10 Year Benefit/ Month	20 Year Benefit/ Month	Benefit/ Month After State Tax
1. Colorado	3.5 percent Compounded	Exempt up to \$24,000	\$5,640	\$8,190	\$7,905
2. S. Dakota	3.1 percent Compounded	None	\$5,475	\$7,470	\$7,470
3. Illinois	3 percent Compounded	Exempt	\$5,375	\$7,225	\$7,225
4. Michigan	3 percent Compounded	Exempt	\$5,375	\$7,225	\$7,225
5. Mississippi	3 percent Compounded	Exempt	\$5,375	\$7,225	\$7,225
6. Rhode Island	3 percent Compounded	Taxable	\$5,375	\$7,225	\$6,720
7. Tennessee	CPI up to 3 percent	Exempt	\$5,150	\$6,600	\$6,600
8. Florida	3 percent Simple	None	\$5,080	\$6,380	\$6,380
9. Georgia	CPI up to 1.5 percent every 6 months Compounded	Up to \$14,000 Excludable	\$5,150	\$6,600	\$6,290
10. Ohio	3 percent Simple	Tax credit up to \$200	\$5,080	\$6,380	\$6,060
11. Arkansas	3 percent Simple	Exempt up to \$6,000	\$5,080	\$6,380	\$5,970
12. Hawaii	2.5 percent Simple	Exempt	\$4,900	\$5,900	\$5,900
13. Washington	CPI up to 3 percent	None	\$4,900	\$5,900	\$5,900
14. Louisiana	CPI up to 3 percent 2.5 percent	Exempt	\$4,900	\$5,900	\$5,900
15. Nevada	CPI up to 5 percent	None	\$4,900	\$5,900	\$5,900

State	Annual Benefit Adjustment	State Income Tax Treatment	10 Year Benefit/ Month	20 Year Benefit/ Month	Benefit/ Month After State Tax
16 Wyoming	CPI up to 3 percent	None	\$4,900	\$5,900	\$5,900
17. Maryland	CPI 2.5 percent	Exempt up to \$18,500	\$4,900	\$5,900	Unknown
18. Montana	3 percent Guaranteed	Exempt up to \$3,600	\$5,080	\$6,380	\$5,770
19. Kentucky	Guaranteed 1.5 percent + Ad Hoc	Exempt up to \$37,500	\$4,900	\$5,900	\$5,745
20. CalSTRS	2 percent Simple	Taxable	\$4,720	\$5,520 + \$601 = \$6,121	\$5,650
21. Connecticut	CPI up to 5 percent	Taxable	\$4,900	\$5,900	\$5,600
22. S. Carolina	CPI up 4 percent	Exempt up to \$15,000	\$4,900	\$5,900	\$5,575
23. Virginia	CPI up to 3 percent	Taxable	\$4,900	\$5,900	\$5,560
24. Alabama	Ad Hoc 2 percent*	Exempt	\$4,720	\$5,520	\$5,520
25. Kansas	Ad Hoc 2 percent*	Exempt	\$4,720	\$5,520	\$5,520
26. Massachusetts	Ad Hoc 2 percent*	Exempt	\$4,720	\$5,520	\$5,520
27. New Hampshire	Ad Hoc 2 percent*	Exempt	\$4,720	\$5,520	\$5,520
28. N. Carolina	Ad Hoc 2 percent*	Exempt	\$4,720	\$5,520	\$5,520
29. Pennsylvania	Ad Hoc 2 percent*	Exempt	\$4,720	\$5,520	\$5,520
30. Texas	Ad Hoc 2 percent*	None	\$4,720	\$5,520	\$5,520
31. Oregon	CPI up to 2 percent	Tax credit for household incomes under \$45,000	\$4,720	\$5,520	\$5,520
32. Nebraska	CPI up to 5 percent	Taxable	\$4,900	\$5,900	\$5,495
33. Utah	CPI up to 4 percent	Taxable	\$4,900	\$5,900	\$5,490
34. Minnesota	CPI up to 2.5 percent	Taxable	\$4,900	\$5,900	\$5,485
35. Iowa	CPI up to 3 percent	Exempt up to \$6,000	\$4,900	\$5,900	\$5,445

State	Annual Benefit Adjustment	State Income Tax Treatment	10 Year Benefit/ Month	20 Year Benefit/ Month	Benefit/ Month After State Tax
36. Maine	CPI up to 4 percent	Exempt up to \$6,000	\$4,900	\$5,900	\$5,440
37. Alaska	Smaller of 9 percent or 75 percent of CPI	None	\$4,675	\$5,425	\$5,425
38. Indiana	Ad Hoc	Taxable	\$4,720	\$5,520	\$5,335
39. N. Dakota	Ad Hoc	Taxable	\$4,720	\$5,520	\$5,305
40. Delaware	Ad hoc	Exempt up to \$12,000	\$4,720	\$5,520	\$5,270
41. West Virginia	Ad Hoc	Exempt up to \$2,500	\$4,720	\$5,520	\$5,220
42. Missouri	CPI up to 5 percent	Exempt up to \$6,000	\$4,720	\$5,520	\$5,220
43. Idaho	CPI up to 6 percent Discretionary	Taxable	\$4,720	\$5,520	\$5,190
44. Oklahoma	Ad Hoc	Exempt up to \$5,500	\$4,720	\$5,520	\$5,185
45. New York	50 percent of CPI up to 3 percent	Exempt	\$4,500	\$4,950	\$4,950
46. New Jersey	60 percent of CPI	Exempt to \$15,000	\$4,540	\$5,140	\$4,925
47. New Mexico	50 percent of CPI	Taxable	\$4,500	\$4,950	\$4,615
48. Vermont	50 percent of CPI up to 5 percent	Taxable	\$4,500	\$4,950	\$4,600
49. Arizona	Investment Surplus	Exempt up to \$2,500	N/A	N/A	N/A
50. Wisconsin	Investment Surplus	Taxable	N/A	N/A	N/A

* Assumes 2 percent annual ad hoc cost of living increase

ATTACHMENT B
Senate Rules Committee
December 16, 2005

TEACHERS' RETIREMENT BOARD
BENEFITS AND SERVICES COMMITTEE

SUBJECT: Results from Health Benefits Survey of Employers

ITEM NUMBER: 6

ATTACHMENT(S): 1

ACTION: _____

MEETING DATE: February 4, 2004

INFORMATION: X

PRESENTER: Ed Derman

BACKGROUND

In October 2003, the California State Teachers' Retirement System (CalSTRS) surveyed districts about the health benefits they provide to their active and retired employees. The purpose of the survey was to determine the pressures districts face in providing health benefits. The results provide information for CalSTRS staff to develop a strategy to be an information resource for districts and CalSTRS members regarding health care benefits. This will enable CalSTRS to implement its role as an educator about health care, consistent with the role that the Board adopted in 2003.

METHODOLOGY

Districts were asked to complete a four page questionnaire about their health insurance as of January 1, 2004, and to include their health insurance rates. Attachment 1 includes a copy of the survey questions, and the number of responses for each answer. Information about dental or vision insurance was not requested. Some of the specific issues addressed in the survey included:

- How the districts provide health benefits to active, retired and disabled employees;
- If the districts have changed their health insurance coverage or requirements for retired employees because of the CalSTRS Medicare Premium Payment Program;
- How much health insurance premiums have increased over the past three years and are expected to increase in the next three years; and
- What benefits and health insurance carrier changes have occurred over the past three years and are expected in the next three years.

A total of 1,117 surveys were sent to the human resource administrators at the county offices of education, K-12 districts and community college districts (districts). As of November 30, 2003, 468 or 41.9 percent of the districts responded. The table below shows how the mailed and returned surveys were distributed by type of district:

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District Type	Total Mailed	Total Returned	% of Total
Community College	72	36	50.0%
County Office of Education	58	25	43.1%
K-12	987	407	41.2%
Total	1117	468	41.9%

In order to confirm that data gained in the survey accurately reflects data for all districts, staff did two comparisons. First, the staff compared the number of full-time equivalent teachers for districts responding to the survey to the number of full time equivalent teachers for all districts, as reported by the California Department of Education for K through 12 districts and the Chancellor's Office for the Community Colleges, to determine if the size of the districts responding to the survey was reasonably consistent with the size of all districts. Second, staff compared the number of districts responding to the survey per county with the number of districts per county. In both cases, staff found that the distribution of districts responding to the survey reflected the distribution of all districts. Therefore, staff is confident that the data gathered in the survey reasonably reflects the situation for all districts.

Because the Los Angeles Unified School District (LAUSD) has approximately 30 percent of the active employees reported in the survey, analysis of the data by employees can be misleading. Therefore, throughout the analysis, data will be provided both by district and by employee.

HIGHLIGHTS OF THE SURVEY RESULTS

CalSTRS members secure health insurance through a variety of sources. Two-thirds of the responding districts are members of a joint powers authority (JPA) or trust. A JPA is an entity formed and operated by one or more public agencies to spread risk among them for the purpose of establishing, operating and maintaining a joint program for employee benefits. While 15.4 percent of the districts contract directly with health insurance providers, 7.5 percent of districts reported they contract with the California Public Employees' Retirement System to obtain health care coverage for their employees. Over 8 percent of districts both contract directly with health insurance providers and are a member of a JPA. The remaining three percent provide health insurance in other ways such as a self-funded health plan.

The picture looks far different when looking at data by employee. When LAUSD active employees are included, 52 percent of active employees work for a district contracting directly with a health insurance provider. However, if active employees of LAUSD are not considered, almost 50 percent of employees are employed with a district that is a member of a JPA or trust. The table below shows, for those employers responding to the survey, the percentage of active employees and how their district offers health insurance.

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	Active Employees	% of Total	Active Employees (Excluding LAUSD)	% of Total
District contracts directly with health insurance provider	93,758	52.0%	38,758	31.0%
District is a member of a joint powers authority or trust.	61,753	34.3%	61,753	49.3%
District contracts directly with health insurance providers and is a member of a joint powers authority or trust	7,999	4.4%	7,999	6.4%
District contract with CalPERS for its health insurance	11,668	6.5%	11,668	9.3%
Other, please explain	5,078	2.8%	5,078	4.1%
Total	180,256	100.0%	125,256	100.0%

Retired Employee Health Insurance Options

The provision of health insurance at retirement is a collective bargaining issue addressed at the district level. Consequently, the availability and cost of health benefits to retired educators varies widely throughout the state. In order to qualify for district's retiree health coverage, most employees must have:

- Worked a certain number of years with the district;
- Reached the district's retirement age;
- Been hired prior to a certain date;

or a combination of the three.

However, retired employees in almost 57 percent of the districts must pay all their health insurance premiums at age 65. A breakdown of how the districts responded is below.

	CC	COE	K-12	Total	% of Total
Lifetime health insurance with premiums paid by district.	7	0	6	13	2.8%
Lifetime health insurance, but district pays only a portion of the premiums.	2	3	11	16	3.5%
District pays health insurance premiums until age 65, and then district pays only a portion of the premiums.	3	0	16	19	4.1%
District pays health insurance premiums until age 65, and then retired employees must pay all the premiums.	11	9	146	166	36.3%
Retired employees, regardless of age, have the option to be covered by district health insurance but must pay all the premiums.	0	4	89	93	20.3%
The arrangement depends on the bargaining unit contract in place when the employee retired. (Note: Most districts pay a portion of the health premium based on years of service, retirement age requirement and or hire date up to age 65)	7	1	72	80	17.5%
It depends on the number of years of service (No other information was provided by respondents.)	3	6	28	37	8.1%
Other, please explain	1	1	14	16	3.5%
No health benefits provided for retirees (See paragraph below.)	1	1	15	17	3.7%
Total	35	25	397	457	100.0%

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The district pays all or a portion of the health premiums for over 57 percent of retired members reported. However, LAUSD is one of the districts that provides lifetime health insurance. If we exclude retired members of LAUSD, only slightly over 21 percent of members receive lifetime health benefits.

Districts are required to permit retired employees to purchase health insurance, at the employees' cost. These are often called AB 528 benefits, a reference to the bill that was enacted in 1985 to require such benefits. However, 3.7 percent or 17 districts reported that they do not provide health benefits for retirees. In the spring CalSTRS will be sending a letter to all districts reminding them of their obligations under AB 528.

Retired employees living outside districts' health insurance coverage area are often enrolled in an out-of-area Preferred Provider Organization. Most districts require the retired employee to pay any increase in costs for the plan.

Disabled Employees Health Insurance Options

The health insurance options available to employees receiving CalSTRS disability benefits also varies throughout the state. Almost 26 percent of districts allow a disabled employee to be covered by the district health insurance, but the employee must pay all the premiums. Only 21 percent of districts pay or contribute toward disabled employees' health insurance premiums until retirement or for lifetime. Approximately 30 percent of districts reported that they only offer employees coverage through the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. Under COBRA, employers of 20 or more employees must give workers and their families the right to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances, such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Qualified individuals may be required to pay the entire premium for coverage up to 102 percent of the cost to the plan. When the COBRA eligibility period ends, often the employee must find his or her own health insurance, which can be quite expensive and is sometimes difficult to obtain because of the employee's pre-existing condition. The remaining districts may pay for an employee's health insurance if the employee meets certain qualifications such as years of service or employee's age.

Impact of CalSTRS Medicare Premium Payment Program

According to the survey responses, the CalSTRS Medicare Premium Payment Program has had relatively little impact on district's health insurance plan options available to retirees. Only eight districts that responded to the survey have made changes, such as holding a Medicare Division Election, requiring Medicare Part A for district's health benefits, or expanding early retiree health benefits coverage. Just 11 districts reimburse retired employees for Medicare Part B.

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ANTICIPATED CHANGES FOR DISTRICT

We asked districts to describe any major changes they anticipated in their health insurance in next three years.

Health Premiums Rate Increases

Of those responding, almost two-thirds of the districts reported that health insurance premiums increased less than 20 percent, whereas 30 percent of the districts reported 20 to 29 percent increases in health insurance premiums in 2003. Almost 70 percent reported less than 20 percent increases in premiums during 2001 and 2002. Districts expect higher increases in the future. Just over 48 percent of the districts are expecting increases of less than 20 percent in the next three years, but 42 percent project health insurance premiums to increase 20 to 29 percent in that same period. Less than 10 percent of the districts are predicting their health insurance premiums will increase over 30 or more percent in the next three years.

Reduction in the Number of Health Insurance Carriers

Districts, especially in rural areas, are seeing a reduction in the number of health insurance carriers available. In 2003, 51 districts reported that Health Maintenance Organizations (HMO) stopped offering services in their area or health carriers ceased operations. In the next 3 years, 30 districts predict a further reduction of HMOs or health carriers in their area. Another trend is health insurance carriers are no longer bidding on business in certain areas because they cannot make a profit.

Employees Share in Health Care Costs

Some districts expect employees to pay a higher share of their health care premiums in the future. Some will accomplish this by capping the district's premium contributions. Another strategy to control the districts' share of health care premium will be to increase the employees' out-of-pocket expenses through higher co-payments for doctor visits and prescription drugs.

Flexible Benefit Plan

Districts also anticipate controlling their health care costs by offering a flexible benefit or cafeteria plan. Cafeteria plans are defined under Section 125 of the Internal Revenue Code as plans maintained by an employer that allows employees to select from a menu of fringe benefits. Each employee is allotted a predetermined dollar amount with which the employee purchases benefits from options made available by the employer. Under this IRS provision, an employee can pay for benefits, such as health insurance, with pretax dollars. These accounts allow districts to limit costs while providing employees with some choice.

CONCLUSION

The information provided by the districts gives CalSTRS a better understanding of how districts provide health insurance to CalSTRS members. The survey indicates that there currently is a need:

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- To educate members about the rising cost of health care, and the potential implication to their benefits;
- To educate members about health care cost in retirement and provide information about possible methods to save for those costs;
- To inform districts of mechanisms available to help members with health care costs in retirement; and
- To remind districts of their obligation to permit retired employees to purchase health insurance at the employee's cost.

As staff continues to work with districts, constituent groups, and members to provide information and education about health care, additional needs will be identified. The Health Insurance Survey proved to be useful in identifying the current situation with respect to the provision of health care by school employers. However, because bargaining contracts are multi-year and are on different cycles, staff would not anticipate significant changes in the provision of health benefits every year. By administering the survey every three years, results are likely to reflect a full bargaining cycle for all districts.

CalSTRS Health Insurance Survey

October 2003



CalSTRS is conducting this survey about certificated employees' (CalSTRS members) health insurance to determine the pressures that districts are facing in providing health benefits to their active and retired members.

Please complete the survey for your district's health insurance that will be effective **January 1, 2004**. If you do not yet have information about coverage with that effective date, please write the effective date of the coverage for which you are responding _____. **Do not include dental or vision insurance.**

We need your completed survey by November 1, 2003.

If you have questions, please call or e-mail CalSTRS Health Benefits staff:

Virginia Johnson @ 916.229.3731 vjohnson@calstrs.com

Rhonda Webb @ 916.229.0654 rwebb@calstrs.com

Rose Mayfield @ 916.229.4238 rmayfield@calstrs.com

Please attach your health insurance rates. (A copy of the information you provide your employees at open enrollment will be fine.)

Person completing the survey _____

Title _____

Phone Number _____

E-mail Address _____

CalSTRS Health Benefits staff may contact you to clarify information.

1. **Number of CalSTRS members covered by your district's health insurance (no matter who pays the premiums)**
180,933 Active members 43,306 Retired members

For multiple choice questions, please circle the letter for the most accurate answer and fill in any necessary blanks.

2. **The district offers health insurance the following way:**
 - a. District contracts directly with health insurance providers-70
 - b. District is a member of a joint powers authority or trust-300
Which one? _____
 - c. District contracts directly with health insurance providers **and** is a member of a joint powers authority or trust. Which one?-38 _____
 - d. District contracts with CalPERS for its health insurance-34
 - e. Other, please explain-14 *The district has a self insured health plan.*



CalSTRS Health Insurance Survey October 2003

3. What health insurance options does the district offer CalSTRS retired members?

- a. Lifetime health insurance with premiums are entirely paid by district-13
- b. Lifetime health insurance, but district pays only a portion of the premiums (District portion? Varies)6
- c. District pays health insurance premiums until age 65, and then districts pay only a portion of the premiums (District portion? Varies -19
- d. District pays health insurance premiums until age 70, and then districts pay only a portion of the premiums (District portion? Varies)-0
- e. District pays health insurance premiums until age 65, and then retired members must pay all of the premiums-166
- f. District pays health insurance premiums until age 70, and then retired members must pay all of the premiums-0
- g. Retired members, regardless of age, have the option to be covered by district health insurance but must pay all the premiums-93
- h. The arrangement depends on the bargaining unit contract in place when the member retired. Please include specifics. -80

Most districts pay a portions of the health premiums based on years of service, retirement age and or hire date to age 65.

- i. It depends on the number of years of service. Please include specifics.-37
No other information was provided by respondents.
- j. Other, please explain. -33

4. What health insurance options does the district offer CalSTRS members who receive CalSTRS disability benefits?

- a. Lifetime health insurance entirely paid by district-5
- b. Lifetime health insurance, but district pays only a portion of the premiums (District portion? Varies)-8
- c. District pays health insurance premiums until the member retires and then the member is given the same options as other retired members-73
- d. Member has the option to be covered by district health insurance but must pay all the premiums-103
- e. Member is offered coverage through COBRA and then must secure health insurance individually-116
- f. Other, please explain-92

Various responses

5. Does the district reimburse retired members age 65 or older for Medicare Part B?

- a. Yes, full amount of premium - 11
- b. Yes, partial payment of premium (District portion? Varies)13
- c. No-434

- 6 Has your district changed its health insurance coverage or requirements for retired members because of the implementation of the CalSTRS Medicare Premium Payment Program under which CalSTRS will pay the Medicare Part A premium for eligible retired members who do not receive Medicare Part A premium-free from another source?**

a. Yes, please explain. -8

b. No-444

- 7. If the district has more than one health insurance carrier, please complete the following questions as they relate to your entire health insurance program for certificated employees rather than one specific health insurance carrier.**

What changes have occurred in 2003, in 2002 & 2001, or do you expect to occur in the next three years? Please check the appropriate level(s) for each question.

	In 2003	In 2001 & 2002	Next 3 years
Total Health Insurance Premiums Increase of			
Less than 20%	229	226	109
20 to 29%	105	82	94
30 to 39 %	9	12	17
40 to 49%	5	3	3
More than 50%	1	1	1
Benefits Changes			
Co-payments for prescription drugs are higher	200	109	102
Co-pays for services other than prescription drugs are higher	141	84	87
Deductibles are higher	109	57	67
Other (explain on next page)			
Reduction in the health insurance carriers available			
HMO(s) stop offering service in our area	35	47	103
Health carrier(s) cease operations	19	38	66
Health carrier(s) do not bid on business	25	21	70
Health carrier(s)' proposed rates too high so district opts not to offer the option	28	15	64
Withdraw from CalPERS health contract	7	4	15
Other (explain on next page)			

8. Other benefits changes (from previous chart)

No responses

9. Other reductions in health insurance carriers (from previous chart)

No responses

10. Please describe any other major or significant changes you anticipate in your health insurance coverage in the next three years.

Health premiums continue to increase

Employees share in health care cost

Reduction in the number of carriers

11. How does your district handle health insurance for retired members who live outside of your area?

Enrolled in a PPO plan, member has to pay for increase costs in the plan

12. Please make any comments you feel would be helpful.

Please send your completed survey and your health insurance rates by November 1, 2003, to CalSTRS in the enclosed envelope. Our address is

California State Teachers' Retirement System

Health Benefits

P.O. Box 15275, MS #47

Sacramento, CA 95851

Thank you

**Senate Rules Committee
Maribel Marin Confirmation Hearing**

- 1. *What do you hope to accomplish during your tenure as a member of the Los Angeles Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?***

My primary goal is to be a responsible decision maker by ensuring that I am well prepared for each meeting. I hope to be fair and reasonable in considering all perspectives. I also hope to support the development of regional solutions and collaborative efforts that improve water quality and protect one of this region's most valuable resources. I will accomplish my goals by participating in existing working collaboratives so that I can better understand stakeholder concerns and interests, and become better educated in the technical and economic details of the issues that come before the Board.

- 2. *Do you receive adequate support from State Board and Regional Board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?***

Regional Board staff has always been responsive to my needs for information either by meeting with me in person or being available by phone. I have found their preparation of materials to be comprehensive and clear so that I feel confident I am prepared for each Board meeting. I currently do not have any suggestions for improvement.

- 3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?***

I have received two trainings on conflicts of interest. The first was presented to me by Assistant Chief Counsel Phil Wyels upon my appointment. The second was presented by Senior Staff Counsel Michael Levy at the Regional Board's annual retreat on January 21, 2006. I know that Water Code section 13207 prohibits me from participating in any permitting action involving myself or any discharger that I am connected with as a director, officer, or employee, or where I have a financial interest in the decision. I know I may not participate in any proceeding on behalf of any waste discharger. I also know I may not receive or have received more than 10% of my income from a discharger subject to an NPDES permit. Additionally, when I have had questions I have consulted directly with our attorneys, and they are and have been freely available for those purposes. I have not had to withdraw myself from voting on an issue since my appointment.

- 4. *What is your view of the relationship between the State Board and your Regional Board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?***

The relationship between the state and Regional Boards is guided by the Porter-Cologne Water Quality Control Act. Regional Boards use basin plans, TMDLs, permits and waste discharge requirements to set water quality goals. To the extent that best practices and/or regional solutions are being developed in other regions of the state, the State Board should provide opportunities for successful strategies to be shared between Regional Boards and their staff.

I think that another area of coordination that could be improved is in the allocation of staffing. There needs to be more flexibility for Regional Boards to hire needed staff in areas where there is clear support and willingness on the part of the regulated community to fund such activities. For example, in the Spills/Leaks Investigation and Cleanup Program there is a backlog of over 300 sites where the responsible party is willing to pay for the Regional Boards oversight. However, the Regional Board cannot hire additional staff because they do not have the fiscal authority to allocate additional staff. It is unfortunate to lose opportunities to expeditiously remediate contaminated sites due to administrative complexity and I hope that there is interest in correcting this situation.

- 5. *Do you believe the Los Angeles Regional Board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?***

The Regional Board for Los Angeles does not receive sufficient funding to process the workload generated by activity in this region. The Boards get less than half of the resources that they need to fully implement and enforce the mandates. For example, almost half of the fees collected for NPDES and Stormwater within the region are used to support the program in other parts of the state.

Regarding legal requirements that are not funded, EPA has a consent decree for TMDLs in our region, and we are required to adopt our TMDLs in advance of the EPA schedule (see answer # 11 as well). Staff estimates that we get less than 50% of the funding needed to fully implement this program. In addition, Basin Plans are reviewed every 3 years per the Clean Water Act. This review includes creating prioritized project lists generated by Board members and the public, for work that will advance our science and allow us to develop better public policy. Staff has reported that we generally only have enough resources to fund about 10% of these projects in this critical program at the Board.

- 6. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?***

The use of best management practices, particularly treatment control measures, can be effective if the BMPs are properly designed and maintained to remove pollutants of concern in storm water discharges. Best management practices in the areas of education, outreach and

enforcement are also valuable in preventing pollution and reducing the need for more costly treatment control measures. BMPs that prove to measurably improve water quality and enable compliance with water quality standards provide clear alternatives for permittees and allow the Board to have reasonable expectation that permittees can achieve quality objectives. For example, implementation of stormwater BMPs under TMDLs accomplishes this goal.

Performance data from past implementation of BMPs establish reliable performance criteria such as the irreducible effluent concentration. In addition, there is much being learned about defining adequacy using BMP sizing criteria to treat the most frequent storms, that will assist dischargers and municipalities consider cost effectiveness when selecting BMPs to treat storm water. Staff has informed the Board that a full grant application has been submitted to the USEPA in Washington, D.C. to develop BMP performance and sizing criteria, and is awaiting USEPA grant funding.

7. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

Numeric limits and BMPs in storm water permits are complementary approaches that support effectiveness of our permits. Without numeric limits, there is little to guide the purpose of BMP implementation. While the ultimate objective should be to attain water quality standards protective of the beneficial uses of receiving waters, BMPs offer an intermediate step based on currently available technology that can progressively lead to improvements in water quality. Objective criteria such as BMP performance measures and numerical limits are very necessary to measure progress and demonstrate compliance.

8. *In what specific ways might your Regional Board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

Staff reports that enforcement activity costs represent about 5% of the Regional Board's resources. The Regional Board has a strong enforcement program, but resources and support for enforcement need to be strengthened. The Regional Board members should work with the State Board in ensuring that additional funds are sought for direct and that existing resource allocations for staff, data management support, administrative support and legal support for enforcement programs, are reviewed.

The Regional Board has put together a prioritized list of the most significant violators in the region as guidance to staff. The priority list is region-wide, and includes all program areas within the Board. This is an important tool and should continue to be utilized. Another important tool is a complaint tracking system currently under development. This tracking system will track complaints relating to water quality concerns, and ensure that the complaints are addressed.

One area that can be improved is in the Board's efforts to coordinate with local prosecutors on civil and criminal actions. Increased participation with local prosecutors, participation with local environmental task forces and coordination across agencies needs to remain a priority. Another

area of improvement is in the use of data management systems. It will be important to work with the State Board to resolve start up problems with the California Integrated Water Quality System. The Executive Officer reports that he is now participating in a statewide task force to ensure that the Regional Board's concerns with the system are resolved, so that identification of violations can become more efficient through electronic data systems. The current process is for each monitoring report to be individually reviewed by staff. With around 3,500 reports received each year, a backlog of over 500 exists.

Enforcement activities are monitored in the following ways, Board members are provided briefings on enforcement activities, or are provided written updates. Additionally, Board members participate in enforcement hearing panels which are scheduled as needed to resolve cases that do not settle. The full board reviews recommendations from the hearing panels and takes action. The board members review time schedule orders and cease and desist orders that are associated with permits. Board members can also participate in closed session discussions on confidential enforcement matters.

9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

According to the Water Quality Enforcement Policy, the Boards shall strive to be fair, firm and consistent in taking enforcement actions, while recognizing the individual facts in each case. Effective enforcement is predicated on clear permits, and the Regional Board endeavors to ensure that as permits are adopted, they are enforceable. Each enforcement action has two fundamental objectives: 1) to identify and remove the threat to water quality and 2) to serve as a deterrent to violating clean water statutes and regulations.

I believe that the progressive enforcement approach used currently by the Board to bring violators back into compliance, is effective. Notices of Non-compliance and Notices of Violation are the first step, with non-compliance leading to an administrative order, and either a cleanup and abatement order or cease and desist order. As appropriate for the case, referrals of criminal and civil cases are made to prosecutors; including the Los Angeles City Attorney, District Attorneys, Attorney General or the Department of Justice.

10. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and Regional Boards? What specific steps could your board take to make monitoring more effective?*

Staff has reported that ocean monitoring of coastal waters is conducted on a regional basis throughout the Southern California Bight (the area from Point Conception in Central California to the Mexican border) every four to five years by a cooperative monitoring program developed and funded by a group of more than 50 federal, state and local agencies and major point source and non-point source dischargers. These regional monitoring studies are funded by the Board at a level of \$3-5 million per year.

These regional studies are complemented by compliance monitoring conducted each year by major NPDES dischargers to the ocean (e.g., Publicly Owned Treatment Works, Power Generating Stations, and Oil Refineries) at a cost of about \$5 million per year. Shoreline monitoring of microbiological indicators to assess human health risks along the coast associated with water contact recreation is conducted by NPDES dischargers and local public health agencies, which expend more than \$1 million annually to assess conditions at beaches and other recreational waters within Santa Monica Bay and elsewhere in the region.

Inland monitoring to assess the ecological health of freshwater systems is conducted by the state under the Surface Water Ambient Monitoring Program (SWAMP). Region 4 has received \$250,000 to \$350,000 per year for the past five years for SWAMP monitoring in our region. This level of funding is insufficient to provide a meaningful basis for assessment. Staff reports that they have used this funding to assess each of the 10 watersheds in the region once within a five-year period. They have focused on assessing the ecological health of freshwater wadeable streams, but require additional funding to complete this assessment and to evaluate human health risks associated with water contact recreation and fish and shellfish consumption by sport fishermen. In addition, staff is requesting additional funding to assess ecological conditions and human health risks in the approximately 50 large lakes and reservoirs in the Los Angeles Region.

According to staff, compliance monitoring by NPDES dischargers provides additional support for monitoring the health of our watersheds. The level of effort varies: in some watersheds, the level of funding for monitoring may reach \$500,000 per year; in others, there are no dischargers and thus no compliance monitoring. Other Regional Board mandated monitoring programs (e.g., TMDL and agriculture waiver monitoring) will contribute to our monitoring of the health of local watersheds, but the level of funding has yet to be determined as these programs still are developing their monitoring designs.

Water quality monitoring should be a higher priority for the State and Regional Boards. Insufficient funding has prevented the establishment of baseline conditions for many of the waterbodies in the Los Angeles Region. A baseline is key to evaluating the health of watersheds, for tracking program effectiveness, and for measuring the results of BMP implementation.

Specific steps for improving the effectiveness of monitoring include integrating the monitoring conducted by various federal, state and local agencies and programs. In many cases, costs can be reduced through redesign of monitoring programs to address multiple objectives and the elimination of unnecessary or redundant monitoring efforts. As part of this redesign effort, staff meet with local stakeholders to identify and clearly define monitoring objectives, select useful indicators for monitoring of each beneficial use or critical ecosystem component, identify assessment thresholds to be used to evaluate the monitoring data, and determine the management responses that will follow any exceedances of these assessment thresholds. The cost savings that can result from such efforts outweigh the additional resources that would be required to sustain such coordination activities.

11. *What schedule currently exists at the Los Angeles Regional Board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the Los Angeles Regional Board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

Staff has reported that the current schedule for TMDL development in the Los Angeles Region is set forth by the court approved Consent Decree in *Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. v. Browner*, Case No. 98-4825 SBA on March 22, 1999. I am told that the TMDL development schedule includes both a schedule for Specified Waters and a schedule for a minimum pace requirement. Twenty-nine pollutant – water body combinations (“Analytical Units”) are subject to the Schedule for Specified Waters with completion dates ranging from March 2000 to 2007. The remaining 63 analytical units are subject to the minimum pace requirement with a final completion date for 92 TMDLs of 2012.

Currently, the Regional Board and US EPA are on schedule to complete TMDLs for twenty nine pollutant – water body combinations by March 22, 2007. This represents nearly 1/3 of the Consent Decree required TMDLs. However, because nearly 50% of the schedule has been expended and implementation of established TMDLs continues to increase workload, continuing to meet the Consent Decree schedule will be a challenge. According to staff, the resource demand for TMDL implementation, which in some cases matches or exceeds the budget for development, has not been considered in current resource allocations.

Several approaches to meeting the TMDL schedule include:

- Increasing staff resources – The Los Angeles Regional Board has the most ambitious TMDL development schedule and the most productive TMDL unit in the State. Staffing allocations have not reflected the work load and productivity of the Los Angeles Region TMDL unit.
- Combining similar TMDLs – Many of the pollutant water body combinations have similar classes of pollutants. This factor lends itself to the development of regional solutions that eliminate the redundancy and costs of having to evaluate the same pollutants multiple times.
- It is my understanding that the State Board staff takes the lead on identifying impaired waterbodies. However, given appropriate resources, Regional Board staff could take the lead in identifying impaired waterbodies and thus accelerate the schedule for identifying impaired waters and developing pollutant loads so that cleanup takes place sooner. Although staff indicates that identification of 303(d) listed waterbodies by the Regional Board is most appropriate because Regional Board staff are most familiar with local waterbodies, this will create new resource demands for the Regional Board.

12. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

The primary mechanisms for implementing TMDLs are provided in Porter Cologne. For WLAs the primary implementation tool are effluent limits in NPDES permits and WDRs. Many agencies, such as CalTrans, municipal sewage agencies, and stormwater management agencies hold NPDES permits and therefore are responsible for implementing load reductions from their facilities. For non-point sources, TMDL implementation relies on the non-point source policy which can include development of conditional waivers for discharges from similar source types. The Conditional Waiver for Irrigated Lands is an example of this type of non-point source implementation program.

Although the TMDLs are implemented through individual permits, the Regional Board can foster and support stakeholder led groups to implement TMDLs on a watershed basis, including monitoring, special studies, and deployment of best management practices. Other agencies clearly have a major role in implementing TMDLs, and the Board can outreach to these agencies to ensure their responsibilities are well understood, support watershed approaches to TMDL implementation, and support granting and contract opportunities to offset costs. These approaches can create efficiencies for both the Regional and State Boards and the regulating agencies.

13. *What is the extent of perchlorate contamination in the board's region? How has it impacted drinking water supplies?*

According to staff reports, perchlorate contamination has impacted drinking water supplies in recent years, primarily in Los Angeles County. Staff further reports that the situation has stabilized and is not getting worse. Regional Board records reflect that perchlorate groundwater contamination has not been found in Ventura County, except for two source locations;

1. On San Nicolas Island where the US Navy conducts testing operations, and
2. At Boeing's Santa Susana Field Laboratory (unincorporated area at Ventura County western border.

The problem is the worst in Los Angeles County where perchlorate has been found in the groundwater beneath and downgradient from:

1. The NASA-JPL (Pasadena) site, and
2. The former Aerojet General (Azusa) site.

The Department of Toxic Substances Control (DTSC) also regulates a few noteworthy perchlorate sites, namely the former Whittaker Bermite (Santa Clarita) site, the former Morris Dam site and the Boeing site, previously mentioned.

In addition, Regional Board staff has compiled a list of 42 suspected sites composed of former used defense sites (FUDs) and fireworks/ flare / match manufacturing sites. Most of the

perchlorate impact is felt in the San Gabriel Valley area. Assessment coordination continues with the USEPA and the State's Fire Marshal's Office.

Regarding impacted drinking water supply wells, staff reports indicate that the California DHS has identified 73 (surface and groundwater) sources, reporting above the notification level of 6 micrograms per liter ($\mu\text{g/L}$). California has not promulgated a Maximum Contaminate Level for perchlorate. Perchlorate is affecting 22 purveyor systems with a peak detection of 100 $\mu\text{g/L}$. This information comes from data acquired between 2001 and 2006.

14. What is the board's role in the monitoring of perchlorate contamination? What types of monitoring and groundwater treatment have been ordered?

The Regional Board shares a monitoring role with CDHS, DTSC and USEPA. A statewide teleconference is held every month for these agencies to coordinate their activities. For the sites regulated by the Los Angeles Regional Board, staff oversees assessments to completion and issue follow-up directives for soil and groundwater cleanup. Where perchlorate groundwater contamination has been substantiated, periodic (quarterly or semi-annual) monitoring of water quality constituents, such as perchlorate is required. This applies to the NASA-JPL and Aerojet sites, for example.

Only treatment processes that are approved as Best Available Treatment (BAT) Technologies by the California DHS shall be used to meet drinking water requirements. This requirement assures that lengthy approval processes, normally associated with emerging technologies are eliminated. Perchlorate is effectively removed from the impacted groundwater using ex-situ and in-situ treatment processes:

Ex-situ (aboveground) Processes:

- a) Ion Exchange
- b) Bioreactor
- c) Permeable Reactive Barrier
- d) Liquid Phase Carbon Adsorption
- e) Membrane Technologies
 - i. Electrodialysis
 - ii. Reverse Osmosis

In-situ (in-ground) Processes:

- a) Bioremediation
- b) Composting
- c) Phytotechnology

15. *What is the extent of chromium VI contamination of soil and groundwater in your region? How has chromium VI contamination impacted drinking water supplies?*

According to staff reports, Chromium VI has been found to occur in the soil and groundwater at former Department of Defense (DoD) facilities or nearby plating shops doing subcontract work for former aerospace, jewelry and industrial companies. No chromium VI sites currently exist in Ventura County. The chromium VI "corridor" follows a 4-mile wide area along the Interstate 5 Freeway along the eastern San Fernando Valley starting in the Sunland- Pacoima area into Los Angeles City and then into the Los Angeles Basin to Cities like Paramont, Compton, Bell, South Gate, Manhattan Beach, Redondo Beach and Long Beach).

During the course of the San Fernando Valley, the Phase II Chromium VI Investigation has identified 30 additional suspected sites. Of this group, two were added to the 106 already identified making the total 108. The last one added was Price Pfister that tested up to 780 µg/L in groundwater. The other 28 were transferred to DTSC for further investigation through a request from the USEPA.

Since there is no State maximum contaminant level (MCL) for Chromium VI, regulatory oversight uses the total chromium MCL and USEPA Soil Screening Levels (SSLs) to evaluate sites for further investigation or enforcement action. To date, 15 Cleanup & Abatement Orders have been issued against chromium VI sites, 7 of which are in San Fernando Valley.

Drinking water has been affected by the idling or closure of contaminated wells. According to staff reports, the San Fernando Valley is the most contaminated and has been declared a USEPA Federal Superfund site. Here, the chromium VI problem poses a challenge since no regional treatment technology has been deployed to mitigate the chromium VI plumes. Groundwater treatment studies are underway to devise a remedy to safeguard groundwater treatment plant operable units currently being operated by the Cities of Glendale and Los Angeles. This process is expected to be completed within the next few years. With regard to Chromium VI contaminated soil locations, the Regional Board staff is updating its General Waste Discharge Requirements (GWDR) to incorporate additional treatment technologies to be used to address chromium VI reduction/elimination – in soil and groundwater. The GWDR will facilitate the cleanup process as these permits are issued administratively by the Executive Officer.

16. *What types of remediation has your board ordered?*

According to staff reports, 15 Cleanup & Abatement Orders have been issued to complete assessment and remediation of the affected soil and groundwater at each site. More Orders are pending for later this year. Shallow chromium VI soil contamination is handled through excavation and ferrous sulfate injection. The in-situ groundwater treatment technologies involve the use of calcium polysulfide, the installation of permeable reactive barriers, injection of ferrous sulfate and in-situ bioremediation using molasses, cheese whey or corn syrup.

It is important to also add that the Regional Board staff is closely coordinating enforcement activity with USEPA, the City of Los Angeles Attorney's Office and the County District Attorney to ensure that chromium VI polluters are held accountable.

1. What do you hope to accomplish during your tenure as a member of the Los Angeles Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?

I hope to help develop effective programs that protect the environment and water quality based on established, locally appropriate data without hindering the ability of business to succeed.

My personal goal is to provide an agricultural perspective as well as represent the Ventura County geographic region.

The Board needs to achieve a balance between the urban and agricultural communities.

With the introduction of the agricultural waiver requirements, we will be establishing a program that will identify problem areas, establish standards, and implement programs that protect and enhance water quality in areas that have lacked any monitoring or regulation in the past. Our goal should be to accomplish this without destroying agriculture's economic viability.

Another goal should be to augment our staffing and use advanced science to validate data reviews. We must also continue to protect our down stream resources with continued monitoring and regulation of any point source pollution.

2. Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?

During my brief time as a board member, I have been impressed with the quality and willingness of our regional staff to present detailed science based information on the current issues. The issues are complex and I have needed clarification at times. The staff has readily helped me understand specific issues. As yet, I have not used the state board staff as a resource, but will not hesitate to do so.

Workshops on specific programs or problem areas could help the entire board better understand some of the complex issues. However, it appears that staff time and resources are already stretched to the limit.

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3. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?

I have received two conflict of interest training sessions specific to my regional board position. The first was by Assistant Council Phil Wyels upon my appointment. The second was by Senior Staff Council Michael Levy at the Regional Board's annual retreat. Prior to that, I have had conflict of interest training at AWA, ACWA, and CAL LAFCO conferences and workshops.

I understand the Water Code prohibits me from participating in any permitting action involving myself or any discharger that I am connected with as a director, officer, or employee, or where I have a financial interest in the decision. I know I may not participate in any proceeding on behalf of any waste discharger. I also know I may not receive more than 10% of my income from a discharger subject to an NPDES permit.

I have had questions and have consulted with both Phil Wyels and Michael Levy for clarification.

I disqualified myself from the discussion and vote on the agriculture waiver.

4. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?

I believe the relationship between the State Board and our Regional Board is at times awkward. I am not sure that the autonomy that regional boards enjoy is always productive.

I do believe coordination and accountability could be improved. The public perception is that each region implements water quality goals, TMDL's, permit enforcement and discharge requirements differently. If the State Board set more specific policy guidelines, with less opportunity for interpretation, then more consistency between regions would be achieved. A consistent effort in regulation and control could alleviate many of the appeals to the state board.

I am not familiar enough with the operation to comment on areas that may benefit from increased transparency.

5. Do you believe the Los Angeles regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?

The Regional Boards are chronically under funded to enforce and fully implement the mandates. Almost half the fees collected for NPDES and Stormwater within the region are used to support the program in other parts of the state. The regions Spills and Leaks Investigation and Cleanup Program has a backlog of over 300 sites where the responsible party is willing to pay for the Regional Boards oversight but the regional board is unable to conduct the oversight because we lack the authority to hire adequate staff.

There are legal requirements not fully funded. The EPA decree for TMDL's is under funded by more than half. Additionally, we review our basin plans every 3 years as required by the Clean Water Act. As part of this review, we assemble and prioritize a list of projects that our Board and the public think are critical to improve our science and develop new policy to better protect our water quality. Our resources only cover about 10% of these projects.

6. What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?

The use of best management practices can be effective if properly designed and maintained to remove targeted pollutants in storm water discharges. Monitoring and upgrading BMP's will ultimately achieve the goal of stormwater run off compliance with water quality standards. Implementation of stormwater programs under TMDL's accomplishes this goal. There is sufficient performance data from past implementation of these controls to establish performance criteria. Additionally, defining adequacy using BMP sizing criteria to treat the most frequent storms will assist dischargers and municipalities in considering cost effectiveness when selecting BMP's to treat storm water.

7. Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?

Numeric limits and BMP's in storm water permits are complementary approaches that will ultimately lead to improvement in water quality. BMP's offer an immediate step based on currently available technology that can progressively lead to improved water quality. Objective criteria such as BMP performance measures and numerical limits are needed to measure progress

and demonstrate compliance. Using both, we should attain water quality standards protective of the beneficial uses of receiving waters.

8. In what specific ways might your regional board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

The Regional Board has a strong enforcement program, but resources and support for enforcement need to be strengthened. Regional Board members should work with the State Board in ensuring that additional funds are sought for direct enforcement.

The Regional Board has developed an enforcement priority list that identifies the most significant violators. The priority list is region-wide and includes all program areas within the board.

The Regional Board is also establishing a complaint tracking system. This tracking system will track complaints relating to water quality concerns and ensure that they are addressed.

Coordination with local prosecutors on civil and criminal actions is a strong enforcement tool.

Use of data management systems is critical for enforcement. Working with the state board is important to resolve start up problems with the California Integrated Water Quality System. Once concerns with the system are resolved, identification of violations can become more efficient through the electronic data systems.

Monitoring of enforcement activities happens through several avenues. Board members are provided briefings on enforcement activities, or provided written updates. Board members also participate in enforcement hearing panels, which are scheduled as needed to resolve cases that do not settle. The full board reviews the panel's recommendations and takes action. The board members also review time schedule orders and cease and desist orders that are associated with permits. In addition, board members participate in closed session discussion on confidential enforcement matters.

9. What enforcement options do you believe provides the most effective tools for violations of board orders?

As described in the Water Quality Enforcement Policy, the board shall strive to be fair, firm and consistent in taking enforcement actions, while recognizing the individual facts in each case. Effective enforcement is predicated on clear permits and the regional board endeavors to ensure that as permits are adopted, they are enforceable.

When violations are identified, the regional board follows a progressive enforcement approach to bring violators back into compliance. Notices of non-compliance and Notices of Violation are the first step, with non-compliance leading to an administrative order and either a cleanup and abatement order or cease and desist order. As appropriate for the case, referrals of criminal and civil cases are made to prosecutors.

10. What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?

Ocean monitoring of coastal waters is conducted on a regional basis throughout the Southern California Bight every four to five years by a cooperative monitoring program developed and funded by a group of more than 50 federal, state and local agencies and major point source and non-point source dischargers. These regional monitoring studies have been funded at a level of approximately \$2.5 to \$5 million per year. These regional studies are complemented by compliance monitoring conducted each year by major NPDES dischargers to the ocean at a level of approximately \$5 million per year in the Los Angeles Region. Shoreline monitoring of microbiological indicators to assess human health risks along the coast associated with water contact recreation is conducted by NPDES dischargers and local public health agencies, which expend more than \$1 million annually to assess conditions at beaches and other recreational waters within Santa Monica Bay and elsewhere in the region.

Despite these extensive monitoring efforts, additional funding is needed to assess human health risks associated with seafood consumption by sport fishermen in coastal waters and to monitor the ecological health of components of the marine ecosystem not currently addressed adequately. Additional funding is also needed for monitoring of lagoons, marinas and small estuaries.

Inland monitoring to assess the ecological health of freshwater systems is conducted by the state under the Surface Water Ambient Monitoring Program (SWAMP). Region 4 has received \$250,000 to \$350,000 per year for the past five years for SWAMP monitoring in our region. This level of funding is woefully inadequate to assess our rivers and streams on a meaningful basis. We have used this funding to assess each of our 10 watersheds in the region once within a five-year period. We have focused on assessing the ecological health of freshwater wadeable streams, but will require additional funding to complete this assessment and to evaluate human health risks associated with water contact recreation and fish and shellfish consumption by sport fishermen. In addition, we need funding to assess ecological conditions and human health risks in the approximately 50 large lakes and reservoirs in the Los Angeles region.

Compliance monitoring by NPDES dischargers provides additional support for monitoring the health of our watersheds. The level of effort varies: in some watersheds, the level of funding for monitoring may reach \$500,000 per year; in others, there are no dischargers and thus no compliance monitoring. Other Regional Board mandated monitoring programs (e.g., TMDL and agriculture waiver monitoring) will contribute to our monitoring of the health of local watersheds, but the level of funding has yet to be determined as these programs still are developing their monitoring designs.

Water quality monitoring certainly should be elevated to a higher priority for the State and Regional Boards. Due to a lack of funding, we have never been able to establish baseline conditions for many of our waterbodies in the Los Angeles Region. In fact, many waterbodies have rarely been monitored. We need to develop a comprehensive monitoring program network to ensure that we understand the baseline conditions within each waterbody, including regular assessment of beneficial uses in our water. This will provide us with a tool to evaluate the health of our watersheds and a means to track improvements associated with the implementation of programs to benefit water quality and the results of best management practices. We also need additional monitoring of critical areas to support risk assessments to provide the public with an evaluation of the human health risks associated with water contact recreation activities and seafood consumption.

One step the Los Angeles Regional Board is taking to make monitoring more effective is to integrate the monitoring conducted by various federal, state and local agencies and programs. In many cases, we can redesign monitoring programs to address multiple objectives and achieve more cost-effective monitoring through the elimination of unnecessary or redundant monitoring efforts. As part of this redesign effort, we meet with local

stakeholders to identify and clearly define monitoring objectives, select useful indicators for monitoring of each beneficial use or critical ecosystem component, identify assessment thresholds to be used to evaluate the monitoring data, and determine the management responses that will follow any exceedances of these assessment thresholds. While leveraging other programs will help the State to implement more efficient monitoring programs, the coordination required to do this requires considerable staff resources. State funding also will continue to be needed to fill the gaps for waterbodies where no existing monitoring effort is underway. Finally, additional staff resources will be needed to analyze monitoring data and communicate the results to the public and other interested parties in an easy to understand form.

11. What schedule currently exists at the Los Angeles regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the Los Angeles regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

The current schedule for TMDL development in the Los Angeles Region is set forth by the court approved Consent Decree in *Heal the Bay, Inc., Santa Monica Baykeeper, Inc. v. Browner*, Case No. 98-4825 SBA on March 22, 1999. The TMDL development schedule includes both a schedule for Specified Waters and a schedule for a minimum pace requirement. Twenty-nine pollutant-water body combinations ("Analytical Units") are subject to the Schedule for Specified Waters with completion dates ranging from March 2000 to 2007. The remaining 63 analytical units are subject to the minimum pace requirement with a final completion date for 92 TMDLs of 2012.

By March 22, 2007, twenty-nine TMDLs are to be established. Currently, the Regional Board and US EPA are on schedule to complete TMDL's for twenty-nine pollutant-water body combinations. This represents nearly 1/3 of the Consent Decree required TMDLs. However, because nearly 50% of the schedule has been expended and with the increased workload stemming from implementation demands on existing TMDLs, it will be a challenge to continue to meet the Consent Decree schedule. Completing TMDLs will further require increasing resources due to increased implementation demand on existing TMDLs and re-openers of existing TMDLs. The resource demand for TMDL Implementation, which in some cases matches or exceeds the budget for development, has not been considered in current resource allocations.

Several approaches to meeting the TMDL schedule include:

*Increasing staff resources-The Los Angeles Regional Board has the most ambitious TMDL development schedule and the most productive TMDL unit in the State. Staffing allocations have not reflected the workload and productivity of the Los Angeles Region TMDL unit. We are currently recruiting staff and plan to fill two vacancies by the end of this fiscal year (June 30). Further, it appears that resource allocations from the State Board in the future will address TMDL Implementation needs. We are planning to add two additional staff resources next fiscal year.

*Combining similar TMDLs-Many of the pollutant water body combinations have similar classes of pollutants with similar types of waterbodies. The Trash TMDLs are an excellent candidate for this approach because many of the technical details for the Trash TMDLs, such as the assimilative capacity of the waterbodies is the same for all waterbodies (e.g., trash does not assimilate). Now that the litigation on the L.A. River Trash TMDL has concluded, staff plans to develop a region-wide Trash TMDL addressing all of the remaining Trash related impairments. This approach will increase efficiency.

*Presently, State Board staff takes the lead on identifying impaired waterbodies. Regional Board staff, with appropriate resources, can take the lead in identifying impaired waterbodies which will lead to accelerating the schedule for identifying impaired waters and developing pollutant loads that will lead to expeditious cleanup. Although we think that identification of 303(d) listed waterbodies by the Regional Board is most appropriate because Regional Board staff are familiar with local waterbodies, identification of 303(d) listed waterbodies will create resource demands for the Regional Board. Resources will have to be allocated to the Regional Board in order to identify impaired waterbodies.

12. What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

The primary mechanisms for implementing TMDLs are provided in Porter Cologne. For WLAs the primary implementation tool are effluent limits in NPDES permits and WDRs. Many agencies, such as CalTrans, municipal

sewage agencies, and stormwater management agencies hold NPDES permits and therefore are responsible for implementing load reductions from their facilities. For non-point sources, TMDL implementation relies on the non-point source policy which can include development of conditional waivers for discharges from similar source types. The Conditional Waiver for Irrigated Lands is an example of this type of non-point source implementation program.

Although TMDLs are implemented through individual permits, the Regional Board can foster and support stakeholder led groups to implement TMDLs on a watershed basis, including monitoring, special studies, and deployment of best management practices. These approaches can create efficiencies for both the Regional and State Boards and the regulating agencies. Other agencies clearly have a major role in implementing TMDLs and the Board can outreach to these agencies to ensure their responsibilities are well understood, support watershed approaches to TMDL Implementation, and support granting and contract opportunities to offset costs.

13. What is the extent of perchlorate contamination in the board's region?
How has it impacted drinking water supplies?

Perchlorate contamination has impacted drinking water supplies in recent years, primarily in Los Angeles County. The good news is that the problem has stabilized since its zenith in 1999 and is not getting worse. Regional Board records reflect that perchlorate groundwater contamination is primarily absent in Ventura County, except for two source locations; on San Nicolas Island where the US Navy conducts testing operations and at Boeing's Santa Susana Field Laboratory. In Los Angeles County, the problem is more acute. Perchlorate has been found in the groundwater beneath and downgradient from the NASA-JPL site and the former Aerojet General site.

Our sister agency, the Department of Toxic Substances Control also regulates a few noteworthy perchlorate sites, the former Whittaker Bermit site in Santa Clarita, the former Morris Dam site and the Boeing site.

In addition, Regional Board staff has compiled a list of 42 suspected sites composed of former used defense sites and fireworks/flare/match manufacturing sites. Most of the perchlorate impact is felt in the San Gabriel Valley area. Assessment coordination continues with the USEPA and the State's Fire Marshal's Office.

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notification level of 6 micrograms per liter. California has not promulgated a Maximum Contaminate Level for perchlorate. Perchlorate is affecting 22 purveyor systems with a peak detection of 100 micrograms per liter. This information comes from data acquired between 2001 and 2006.

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Only treatment processes that are approved as Best Available Treatment Technologies by the California DHS shall be used to meet drinking water requirements. This requirement assures that lengthy approval processes, normally associated with emerging technologies are eliminated. Perchlorate is effectively removed from the impacted groundwater using ex-situ and in-situ treatment processes. The ex-situ (aboveground) process includes Ion Exchange, Bioreactor, Permeable Reactive Barrier, Liquid Phase Carbon Adsorption and the membrane technologies of Electrodialysis and Reverse Osmosis. The in-situ (in-ground) process includes Bioremediation, Composting and Phytotechnology.

15. What is the extent of chromium VI contamination of soil and groundwater in your region? How has chromium VI contamination impacted drinking water supplies?

Chromium VI has been found to occur in the soil and groundwater at former Department of Defense facilities or nearby plating shops doing subcontract work for former aerospace, jewelry and industrial companies. No chromium VI sites currently exist in Ventura County. The chromium VI "corridor" follows a 4-mile wide area along the Interstate 5 Freeway along the eastern San Fernando Valley starting in the Sunland-Pacoima area into Los Angeles City and then into the Los Angeles Basin to cities like Paramont, Compton, Bell, South Gate, Manhattan Beach, Redondo Beach and Long Beach.

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were added to the 106 already identified making the total 108. The last one added was Price Pfister that tested up to 780 micrograms per liter in groundwater. The other 28 were transferred to DTSC for further investigation through a request from the USEPA.

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In most of the areas affected, chromium IV detection has lead to domestic supply wells being idled or closed. Where the regional groundwater problem is most acute is within the San Fernando Valley, a declared USEPA Federal Superfund site. Here, the chromium VI problem poses a challenge since no regional treatment technology has been deployed to mitigate the chromium VI plumes. Groundwater treatment studies are underway to devise a remedy to safeguard groundwater treatment plant operable units currently being operated by the cities of Glendale and Los Angeles. This process is expected to be completed within the next few years. With regard to chromium VI contaminated soil locations, the Regional Board staff is updating its General Waste Discharge requirements to incorporate additional treatment technologies to be used to address chromium VI reduction/elimination in soil and groundwater. The GWDR will facilitate the cleanup process as these permits are issued.

16. What types of remediation has your board ordered?

The Regional Board has issued 15 Cleanup & Abatement Orders to complete assessment and remediation of the affected soil and groundwater at each site. More orders will be issued later this year. Shallow chromium VI soil contamination is handled through excavation and ferrous sulfate injection. The in-situ groundwater treatment technologies involve the use of calcium polysulfide, the installation of permeable reactive barriers, injection of ferrous sulfate and in-situ bioremediation using molasses, cheese whey or corn syrup.

It is important to also add that the regional Board staff is closely coordinating enforcement activity with USEPA, the City of Los Angeles Attorney's office and the County District Attorney to ensure that chromium VI polluters are held accountable.

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CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

April 20, 2006

Leo J. Vander Lans
14 Rivo Alto Canal
Long Beach, CA 90803

Dear Mr. Vander Lans:

As you know, your appointment to the Los Angeles Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by May 12, 2006.

We would also like to receive an updated Form 700, Statement of Economic Interest, by May 12th. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that might have occurred. You can fax us an update at (916) 445-0596 or simply let us know that no changes are necessary.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Los Angeles Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Do you receive adequate support from state board and regional board staff to assist you in better understanding some of the complex issues before you? Do you have any suggestions on how staff might better assist you?*

3. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. Regional board budgets are not reviewed individually by the governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board, instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*
5. *Do you believe the Los Angeles regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from storm water. In the past these permits have imposed best management practices on dischargers, under the assumption that the use of those practices will result in water quality improvements. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

6. *What is your view about the efficacy of relying on best management practices to protect the state's waters against polluted storm water?*

7. *Would the use of numeric limits in storm water permits lead to better water quality than permits that rely on best management practices?*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

8. *In what specific ways might your regional board improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*
9. *What enforcement options do you believe provides the most effective tools for violations of board orders?*

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically under funded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

10. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal storm water permit programs and total maximum daily load programs.

Currently regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

11. *What schedule currently exists at the Los Angeles regional board for total maximum daily load development? Is the schedule being met? If not, please specify what aspects of the schedule are unmet? What specific steps do you support to get the Los Angeles regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*
12. *What steps would you take to implement total maximum daily loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Perchlorate Contamination

California has at least 350 water wells that have been contaminated by perchlorate, largely in the Los Angeles Basin, according to the Department of Health Services. In December the Los Angeles regional water board's executive director reported that the board had received an additional seven reports on perchlorate contamination at Department of Defense facilities, including two facilities in Van Nuys, and one each in Downey, Azusa, Burbank, Santa Clarita, and Pomona. The Department of Health Services has established a notification level of 6 parts per billion, but it has found perchlorate levels up to 159 parts per billion in drinking water wells in Los Angeles County.

13. *What is the extent of perchlorate contamination in the board's region? How has it impacted drinking water supplies?*
14. *What is the board's role in the monitoring of perchlorate contamination? What types of monitoring and groundwater treatment have been ordered?*

Chromium VI Contamination

In the late 1990s the federal EPA designated portions of the San Fernando Valley as a Superfund site because of industrial contamination of the soil and water by various compounds including chromium VI. Chromium is metal that is widely used for the production of metal alloys and other industrial purposes. Metals and alloys that contain chromium are frequently used to manufacture automobiles, appliances, and other consumer products.

The Los Angeles regional board staff is continuing its phase II investigation of the San Fernando Valley chromium VI contamination. One hundred and six sites are being investigated, with 37 sites still under active investigation.

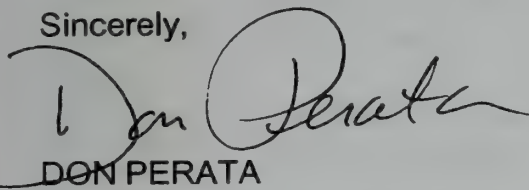
15. *What is the extent of chromium VI contamination of soil and groundwater in your region? How has chromium VI contamination impacted drinking water supplies?*

16. *What types of remediation has your board ordered?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your time and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata". The signature is fluid and cursive, with a large initial "D" and "P".

DON PERATA

DP:KW:dc

LEO J. VANDER LANS
14 Rivo Alto Canal
Long Beach, CA 90803
Telephone: (562) 433-1391 - Facsimile: (562) 438-6600

Leo Vander Lans
WQCB, LA Region
Responses

May 10, 2006

Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sebelhaus:

Here are my responses to the questions in Senator Peralta's recent letter:

1. Having been involved in water activities for many years (both at the Long Beach Water Department and at the Water Replenishment District), I continue to have that interest and plan to contribute to reducing/eliminating pollution in our waterways. I believe this goal can be accomplished by basin planning and regulation.
2. Yes.
3. I received training before I joined the Board from Assistant Chief Counsel Phil Wyels and at our annual retreat in January 2006 from Staff Counsel Michael Levy. In addition, I am aware of the prohibition in Water Code Section 13207. On one occasion, I recused myself when a matter involving the Water Replenishment District was on the agenda about which I had some knowledge from my time on that Board.
4. Due to my rather recent arrival, I have no view on the relationship except that the annual conference in April (all Regions and the State members) was helpful to an understanding of the statewide activities.
5. No. Particularly noteworthy is our 300 site backlog for cleanup. This exists even though the responsible party is willing to pay for our oversight activities. However, we do not have the staff and are not allowed to hire them even though the costs would not be a burden on the state.

MAY 15

Page 2

6. I am informed that the use of best management practices (BMP's), particularly treatment control measures, can be effective if the BMP's are properly designed and maintained to remove pollutants of concern in storm water discharges.
7. Numeric limits and BMP's in storm water permits are complementary approaches that should lead to improvement in water quality.
8. More funding is needed. I believe we have a strong enforcement program, but additional resources and support are necessary. Monitoring takes place by members sitting on enforcement hearings, by briefing and by the Executive Officer's report.
9. In my opinion, prompt citing of the offender is a necessary first step, then either Board action or referral to the appropriate prosecuting agency.
10. Monitoring is currently being done on ocean and inland waters. On the ocean side, some funding is by those who discharge into the ocean; i.e., power generating stations and oil refineries, as well as Bight '94, '98, '03. On the inland side, monitoring is being done by the State in the SWAMP program – Surface Water Ambient Monitoring Program. Our region has received \$250,000-\$350,000 per year for the last five years. There is also compliance monitoring by NPDES dischargers. All funding received is inadequate. More is needed to check further on the marine ecosystem and the ecological health of freshwater streams, plus the fifty large lakes and reservoirs in the Los Angeles Region. It is a high priority, but more funds are needed. Our region is attempting to make monitoring more effective by working closely with the other agencies involved, but that will not solve the problem.
11. I am informed that the current schedule for TMDL development in the Los Angeles Region is set forth by the court approved Consent Decree in *Heal the Bay, Inc.; Santa Monica Baykeeper, Inc. v. Browner*, Case No. 98-4825 SBA on March 22, 1999. The TMDL development schedule includes both a schedule for Specified Waters and a schedule for a minimum pace requirement. Twenty-nine pollutant – water body combinations ("Analytical Units") are subject to the Schedule for Specified Waters with completion dates ranging from March 2000 to 2007. The remaining 63 analytical units are subject to the minimum pace requirement with a final completion date for 92 TMDL's of 2012.

By March 22, 2007, twenty-nine TMDL's are to be established. Currently, the Regional Board and U.S. EPA are on schedule to complete TMDL's for twenty-nine pollutant – water body combinations by March 22, 2007. This represents nearly one-third of the Consent Decree required TMDL's

However, because nearly 50% of the schedule has been expended, and with the increased workload stemming from implementing the established TMDL's, it will be a challenge to continue to meet the Consent Decree schedule. Completing TMDL's will further require increasing resources due to increased implementation demands on existing TMDL's and re-openers of existing TMDL's. The resource demand to TMDL implementation, which in some cases matches or exceeds the budget for development, has not been considered in current resource allocations.

12. The primary mechanisms for implementing TMDL's are provided in Porter Cologne. For WSA's, the primary implementation tool is effluent limits in NPDES permits and WDR's. For non-point sources, TMDL implementation relies on the non-point source policy, which can include development of conditional waivers for discharges from similar source types. Although the TMDL's are implemented through individual permits, the Regional Board can foster and support stakeholder led groups to implement TMDL's on a watershed basis, including monitoring, special studies, and deployment of BMP's. Other agencies clearly have a major role in implementing TMDL's, and the Board can outreach to these agencies to ensure their responsibilities are well understood, support granting and contract opportunities of offset costs.
13. Perchlorate contamination has impacted drinking water supplies in recent years, primarily in Los Angeles County. The good news is that the problem has stabilized since its zenith in 1999 and is not getting worse. Regional Board records reflect that perchlorate groundwater contamination is primarily absent in Ventura County except for two source locations:
 - a. On San Nicolas Island where the U.S. Navy conducts testing operations, and
 - b. At Boeing's Santa Susana Field Laboratory (unincorporated area at Ventura County western border).

In Los Angeles County, however, the problem is more acute. Perchlorate has been found in the groundwater beneath and downgradient from:

- a. The NASA-JPL (Pasadena) site, and
- b. The former Aerojet General (Azusa) site.

Our sister agency, the Department of Toxic Substances Control (DTSC) also regulates a few noteworthy perchlorate sites; namely, the former Whittaker Bermite (Santa Clarita) site, the former Morris Dam site and the Boeing site previously mentioned.

In addition, Regional Board staff has compiled a list of 42 suspected sites composed of former used defense sites (FUD's) and fireworks/flare/match manufacturing sites. Most of the perchlorate impact is felt in the San Gabriel Valley area. Assessment coordination continues with the U.S. EPA and the State's Fire Marshal's Office.

Regarding impacted drinking water supply wells, the California DHS has identified 73 (surface and groundwater) sources reporting above the notification level of six micrograms per liter. California has not promulgated a Maximum Contaminate Level for perchlorate. Perchlorate is affecting 22 purveyor systems with a peak detection of 100 ug/L. This information comes from data acquired between 2001 and 2006.

14. The Regional Board shares a monitoring role with CDHS, DTSC and U.S. EPA. All of these agencies coordinate their activities and update each other during monthly statewide teleconferences. For the sites regulated by the Los Angeles Regional Board, staff oversees assessments to completion and issues follow-up directives for soil and groundwater cleanup. Where perchlorate groundwater contamination has been substantiated, periodic (quarterly or semi-annual) monitoring of water quality constituents, such as perchlorate, is required. This applies to the NASA-JPL and Aerojet sites, for example.

Only treatment processes that are approved as Best Available Treatment (BAT) Technologies by the California DHS shall be used to meet drinking water requirements. This requirement assures that lengthy approval processes, normally associated with emerging technologies are eliminated.

15. Chromium VI has been found to occur in the soil and groundwater at former Department of Defense (DoD) facilities or nearby plating shops doing subcontract work for former aerospace, jewelry and industrial companies. No chromium VI sites currently exist in Ventura County. The chromium VI "corridor" follows a 4-mile wide area along the Interstate 5 Freeway along the eastern San Fernando Valley, starting in the Sunland-Pacoima area, into Los Angeles City and then into the Los Angeles Basin to cities like Paramount, Compton, Bell, South Gate, Manhattan Beach, Redondo Beach and Long Beach.

During the course of the San Fernando Valley, the Phase II Chromium VI Investigation has identified 30 additional suspected sites. Of this group, two were added to the 106 already identified making the total 108. The last one added was Price Pfister that tested up to 780 ug/L in groundwater. The other 28 were transferred to DTSC for further investigation through a request from the U.S. EPA. Since there is no state maximum contaminant level (MCL) for

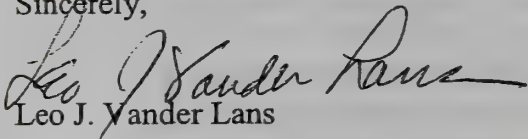
Page 5

Chromium IV, regulatory oversight uses the total chromium MCL and U.S. EPA Soil Screening Levels (SSL's) to evaluate sites for further investigation or enforcement action. To date, fifteen Cleanup & Abatement Orders have been issued against chromium VI sites, seven of which are in San Fernando Valley.

16. I am informed that the Regional Board has issued fifteen Cleanup & Abatement Orders to complete assessment and remediation of the affected soil and groundwater at each site. More Orders will be issued later this year. Shallow chromium VI soil contamination is handled through excavation and ferrous sulfate injection. The in-situ groundwater treatment technologies involve the use of calcium polysulfide, the installation of permeable reactive barriers, injection of ferrous sulfate and in-situ bioremediation using molasses, cheese whey or corn syrup. It is important to also add that the Regional Board staff is closely coordinating enforcement activity with the U.S. EPA, the City of Los Angeles Attorney's Office, and the County District Attorney to ensure that Chromium VI polluters are held accountable.

Per the request of Senator Peralta, enclosed is my most recent FPPC Form 700, Statement of Economic Interest, which was filed March, 2006.

Sincerely,


Leo J. Vander Lans

LJV:jr
encl

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26 Evelyn J. Mizak
27 Shorthand Reporter
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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

P.K. AGARWAL, Director
Department of Technology

JAMES D. STASSI, Governmental Advocate
Microsoft

KRIS ROSA
Silicon Valley Leadership Group

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1 APPENDIX: Written Responses to Committee Questions
2 By Appointee, as well as Written
3 Statements by Appointees Not Required to
4 Appear: Member, Student Aid Commission:
5 RORY J. DIAMOND; Members of the Rehabilitation
6 Appeals Board: ALTHEA C. BURNS, JOHN T.
7 KEHOE, PETER T. MENDOZA, CATHLEEN J. PONCABARE,
8 CLAUDIA C. RICHARDS, and GAEL H. TROUGHTON 10
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--ooOoo--

CHAIRMAN PERATA: We have one Governor's appointee here today for the Department of Technology, about which I know absolutely nothing. So, Mr. Agarwal, come forward. You and Senator Bowen can talk to each other.

SENATOR BATTIN: Actually, I know a little something.

CHAIRMAN PERATA: We don't do technology. Welcome, sir.

MR. AGARWAL: Thank you.

CHAIRMAN PERATA: Would you like to open.

MR. AGARWAL: Good afternoon, Mr. Chairman and Members.

My name is PK Agarwal. I am here before you today for confirmation as Director of the Department of Technology Services. Thank you for the opportunity to address this Committee and present my vision for technology in California state government.

First, a few words about my career. I spent twenty-two years of my career in the information technology field in California state government, and a total of eight years in the private sector. I recently returned to state government, having spent the last five years in the private sector. During these five years, I had the good fortune of working with over a dozen state governments in helping transform their IT operations. This experience should serve me well to help shape IT in the State of California.

1 Also, my last government position was as the CIO
2 of California Franchise Tax Board, where I had the pleasure of
3 being a member of a pretty savvy management team with many IT
4 successes.

5 As you know, California is the home of the
6 information technology industry. Our technology industry and
7 its economic value is the envy of the world. It is in this
8 spirit that I'd like to use technology for the delivery of state
9 services and have California duly recognized as the guiding
10 light for smart technology use around the globe.

11 My vision for this department is two parts:
12 short term and long term.

13 My short-term vision over the next few months is
14 to complete consolidation of the two data centers, the Teale
15 Data Center and the Health and Human Services Data Center, as
16 well as the Department of General Services telecommunication
17 function. This consolidation, started almost a year ago, is on
18 track for a timely completion. I also want to make sure that we
19 successfully complete a number of major projects currently in
20 progress.

21 In the long term, I want to build the department
22 into an organization that creates value and efficiency by
23 consolidating utility-like services, such as email and servers.
24 I also want to focus on building new services that bring
25 California government closer to its constituents. I would also
26 like to deploy new technologies and tools that make state
27 employees more productive and programs more effective.

28 Last, but not the least in importance, I will

1 continue to work to ensure the privacy and security of state
2 data assets.

3 I would also like to add that during the last few
4 months, we have been successful in getting momentum toward this
5 vision of delivering the value of technology to California state
6 government.

7 Thank you for this opportunity to address the
8 Committee. I am happy to answer any questions you have.

9 SENATOR BATTIN: Thank you very much for coming.

10 I have a couple of questions. One of the
11 concerns that I have seen over my time in the Legislature is
12 that the state produces software that doesn't work: Department
13 of Motor Vehicles; I saw a system on Welfare.

14 In talking to a lot of CEOs about this, I've kind
15 of come to the realization that a couple things have happened,
16 and I'd like your take as to how you see it.

17 Number one is that it appears that the request
18 for bid is so detailed as to how it's supposed to be done that
19 it actually hamstring the programmer from writing code, which is
20 the way they like to do it.

21 It seems to me that those that are not in the
22 private sector are telling those that are in the private sector,
23 "We can't write it ourselves, but we want you to write it that
24 way." That limits them.

25 The second thing I never understood is this
26 belief that we have to own it, that we have to own the license
27 of it. I've never really understood why California considered
28 itself in competition with our Department of Motor Vehicles

1 system, for example, with the State of Ohio.

2 Why can't we cut a deal with a vendor and say,
3 "Listen, if we're going to pay you for this, you write it the
4 way you want. We want it to be delivered. This is what we want
5 it to do. And if you want to sell it to other states, you go
6 right ahead. And by the way, we'd like a piece of that action."

7 But it doesn't seem to work that way, so I want
8 to get your take on if I'm wrong in my assessment?

9 MR. AGARWAL: Senator, you're absolutely right.
10 Let me answer the first question about why our bid documents get
11 very detailed.

12 First of all, I am a very strong proponent that
13 we should generally specify the problems we are trying to solve
14 and let the private sector bring their most creative assets to
15 work for us. So, I think it's a historic limit.

16 In fact, in my previous life at Franchise Tax
17 Board, we exactly did that, where we specified that we have
18 certain problems, collections. And therefore, let the private
19 sector come up with creative solutions.

20 So, that's absolutely the right way of
21 approaching this thing. We should not be becoming very granular
22 and specific, because realizing that technology acquisitions
23 take time, it can get obsolete if we get very specific. So, I
24 wholeheartedly agree with you.

25 On the second issue, which in our language we'll
26 call intellectual property, the way we are approaching it now is
27 that anything that's developed in a relationship between private
28 sector and the state is intellectual property. The only thing

1 we are looking for is the right for the state to use it. But
2 other than that, we should really have it in public domain, so
3 anybody should be able to use it.

4 So, I absolutely agree with you on both fronts.

5 SENATOR BATTIN: Any other questions? Senator
6 Perata?

7 CHAIRMAN PERATA: I used the cell phone and
8 exhausted my knowledge.

9 SENATOR BATTIN: Senator Bowen, do you have any
10 questions?

11 SENATOR BOWEN: I'm actually so familiar with
12 this gentleman's work that I don't have to ask him questions to
13 feel comfortable, other than to question his sanity for coming
14 back to state service at a compensation rate that is far below
15 his market value.

16 Thank you for that, and for your good work at the
17 Franchise Tax Board, which is an example of how to do an IT
18 project right.

19 MR. AGARWAL: Thank you.

20 SENATOR BOWEN: And may you do the same for the
21 rest of the state.

22 SENATOR BATTIN: Senator Ashburn.

23 SENATOR ASHBURN: Just a comment.

24 I also was struck by your movement from the
25 government to the private sector and back to public service.
26 And not all people can do that. They're not built that way.

27 I think that says something very positive about
28 you, and the experiences that you've had, a variety of them.

1 I just want to give you, because I'm convinced of
2 your capabilities, encourage you to take on the protectionism
3 that exists within the various departments and agencies of state
4 government to hang on to what they have and to keep possession
5 of the keys to the castle.

6 Information technology, the ability to do the
7 public's business faster, quicker, better, with less cost is
8 extraordinarily important. And as Senator Battin pointed out,
9 our track record stinks.

10 You're the guy. I know that not all of
11 technology is within your domain, but your ability to have
12 influence is extraordinary. I encourage you in that.

13 I think you'll do a great job.

14 MR. AGARWAL: Thank you, Senator.

15 My wife, who's in the audience, actually often
16 questioned the sanity of my moving back into the public sector.

17 [Laughter.]

18 CHAIRMAN PERATA: Let's hear from her.

19 SENATOR BOWEN: There's at least one sane person
20 in the family.

21 [Laughter.]

22 CHAIRMAN PERATA: Let's see if we can pick her
23 out.

24 Would you like to introduce her?

25 MR. AGARWAL: Yes, I'd like to introduce my soul
26 mate, Nancy Watson, and my son, Kumar Agarwal.

27 CHAIRMAN PERATA: Two sane people. Do you think
28 he's nuts, too? That's a good response for an heir.

1 Anybody here in support? Please come forward.
2 MR. STASSI: Hi. Jim Stassi on behalf of
3 Microsoft.

4 As the Committee Members have all intimated,
5 you'd be hard-pressed to find a higher qualified candidate than
6 PK Agarwal for this position. I think his actions in the
7 private sector actually are pretty closely related to his role
8 here, and that's to improving IT for California.

9 And with that, we've had the pleasure of working
10 with him personally in the past, and he's a highly energetic,
11 personable, friendly, high qualified guy. We urge his
12 confirmation.

13 Thank you.

14 CHAIRMAN PERATA: Anyone else? Yes.

15 MS. ROSA: Kris Rosa on behalf of the Silicon
16 Valley Leadership Group in support of the confirmation.

17 CHAIRMAN PERATA: Thank you.

18 Anybody in opposition.

19 With that, unless you have anything further you'd
20 like to say?

21 MR. AGARWAL: No, I just want to thank you for
22 this opportunity.

23 CHAIRMAN PERATA: We want to thank you for doing
24 this.

25 Please call the roll.

26 SENATOR BATTIN: I made the motion.

27 SECRETARY WEBB: Ashburn.

28 SENATOR ASHBURN: Aye.

1 SECRETARY WEBB: Ashburn Aye. Bowen.

2 SENATOR BOWEN: Aye.

3 SECRETARY WEBB: Bowen Aye. Cedillo.

4 SENATOR CEDILLO: Aye.

5 SECRETARY WEBB: Cedillo Aye. Battin.

6 SENATOR BATTIN: Aye.

7 SECRETARY WEBB: Battin Aye. Perata.

8 CHAIRMAN PERATA: Aye.

9 SECRETARY WEBB: Perata Aye. Five to zero.

10 CHAIRMAN PERATA: Congratulations.

11 MR. AGARWAL: Thank you.

12 CHAIRMAN PERATA: For those who were here on Item
13 Five, we're putting it over for a week, Mr. Crane.

14 [Thereupon this portion of the
15 Senate Rules Committee hearing
16 was terminated at approximately
17 1:45 P.M.]

18 --ooOoo--

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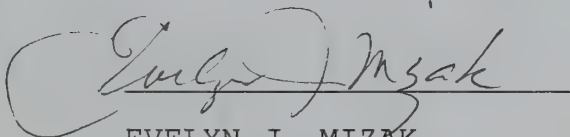
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of May, 2006.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

1. What skills, experience, and expertise do you bring to DTS? What are your short- and long-term goals for DTS?

I believe my blend of public and private sector experience in the Information Technology (IT) field provides a unique and well-rounded foundation to lead the state's new IT operations department. I have spent 22 years of my career in government and eight years in the private sector. My last position in government was as the Chief Information Officer (CIO) at the Franchise Tax Board (FTB), which provides me the perspective of one of our customer agencies. In the private sector, I have worked both for large and small companies that provided services to government. I have worked with over a dozen state governments to successfully transform their IT operations through eGovernment. I have also served as the President of National Association of State CIO's and the Chair of the National Electronic Commerce Coordinating Council. These roles provide me with an excellent national perspective on government IT issues.

My short-term goal is to successfully complete the consolidation of the three entities (The former Stephen P. Teale Data Center, the Health and Human Services Data Center, and the Department of General Services, Office of Network Services.) into a smooth running operation and successfully completing critical statewide projects that are currently in progress. Last month, for example, we completed one such project, the migration of State's Child Welfare System/Case Management System from a private sector data center to the Department of Technology Services (DTS). The migration was completed on-time and within budget.

My long-term goal is to build a service delivery organization that cost effectively and efficiently provides technology services to state agencies. I also intend to consolidate common "utility" like services, such as email and networks, to provide a greater value to taxpayers. I will focus on deployment of new cost effective technologies to serve Californians better. I will also continue to monitor and strengthen the security and privacy of State's data assets.

2. Please describe the most significant challenges faced in consolidating the data centers. What issues remain and what are your plans to solve them?

I consider the following issues as the most significant challenges faced during consolidation:

- Consolidating working teams that used different processes and were located at multiple sites.
- Combining multiple overlapping rate structures into a single rate structure.

- Communicating consolidation progress to our customers and employees.
- Extracting efficiencies that are feasible due to consolidation.
- Overcoming cultural differences between the three former agencies.

We have made considerable progress in all these areas. A majority of our consolidation related activities are planned for completion by June 30, 2006.

Our remaining issues are:

- *Facility Consolidation.* The consolidation of our facilities is a multi-year effort that must accommodate the long-term needs of the State's IT operations and programs. We have created a multi-discipline project team that is planning and preparing for facility consolidation. In addition, we are working closely with the Departments of Finance and General Services to accommodate our facility needs.
- *Statewide Operational Recovery Strategy.* Due to recent natural disasters in the Gulf States, the need for disaster preparedness has become heightened. We must examine the State's short and long-term strategies to respond to natural and man-made disasters through our operational recovery services. This effort is in the early planning phase and it is expected to be a multi-year effort.
- *Simplified Rates.* Even though we are making progress in developing a unified rate structure, we must also create simplified rates that all of our stakeholders can easily understand when reviewing our services and operations. Over the next year, we plan to implement two rate packages that will contain service models with simplified rate structures.

3. Does DTS currently have the ability to recruit and retain talented IT professionals? What are the challenges in recruiting and retaining them? How does DTS address the disparities between public and private sector employment?

To date, DTS has been successful in meeting its IT staffing needs from within the State's civil service system. However, DTS' efforts to recruit IT professionals from the private sector and college campuses are impacted by the constraints of the civil service system. We intend to partner with the Department of Personnel Administration (DPA) and the State Personnel Board (SPB) to develop methods for recruiting IT professionals. In combination with new examination methods, we are increasing our outreach efforts by participating in job fairs and partnering with universities and colleges. We also plan to develop a mentoring program that will market DTS to younger generations. Additionally, SPB is exploring a new testing system

that would give employees eligibility in multiple classifications via a single test. Further, SPB is looking at streamlining the IT classification structure.

However, recruitment and retention in the future may be a challenge if the gap between public and private compensation continues to increase. A recent DPA salary survey highlighted another aspect of the compensation issue – the salary of State IT professionals' lags behind those of local governments.

4. What is DTS doing to address workforce planning in light of projected retirement rates and project needs? Are there additional actions that DTS should take?

First, we have conducted an internal workforce analysis to determine the pending retirement rates per year at DTS. Secondly, we recently completed a staff skills assessment and have trained staff in workforce/succession planning.

Our next steps include the development of a workforce plan that will clearly identify our staffing needs to align with our Strategic Plan. From there, we will analyze the current DTS workforce, identify the gaps between the present and future, and develop solutions to close that gap.

As mentioned earlier, we are also exploring alternative methods to increase recruitment efforts with DPA and SPB. We are involved in a statewide committee that is conducting a classification study to improve the recruitment and retention of skilled employees as part of workforce planning.

5. Is the training center fully utilized? Is training required or voluntary? Who attends trainings? How do you measure the effectiveness of the training?

The DTS training center is a fee-based operation utilized by State agencies on an as needed basis. We also rely heavily on the training center to keep our own staff skills up-to-date. Training center utilization has distinct seasonal cycles. During May and June, towards the end of the fiscal year, the training center is typically booked to capacity. On the other hand, in July and December, utilization falls off to roughly 50% because of the uncertainty surrounding training budgets and vacations during the holidays. The training center is also available for use by city, county, and federal employees. The training center provides cost effectiveness by consolidating state agency training needs.

The training center's effectiveness is measured by participant and instructor evaluation. Each participant is asked to provide a detailed evaluation of the relevance and thoroughness of material presented in each class. Additionally, each instructor evaluates the facility, staff, and whether students

were adequately prepared for the class. These evaluations are reviewed and changes are made if necessary. Changes may include replacing instructors for future classes or changing class material.

6. ITMA is entering its thirteenth year. Is the program successful? How do you determine the success of the academy? Would you like to see it expanded?

The Information Technology Management Academy (ITMA) is a highly respected and sought after program that is offered once a year to 25 mid-level IT managers in State government. The ITMA mission is to develop future senior State IT leaders. This is achieved by carefully selecting promising middle managers and nurturing them through formal training and mentoring. Most of the program's graduates go on to become successful IT leaders in State service. The annual evaluation of the program by graduates, sponsors, and class managers clearly indicate its importance and value to the State IT community.

We are exploring the possibility of expanding the program to meet State's workforce needs. In addition, we are considering an expansion of the program to strengthen the IT competency of State's program and business managers.

7. How does DTS coordinate with the various agencies to ensure a cohesive plan for IT services? Does DTS play a role in improving communication between agencies?

In the past, data center customers were involved in planning for IT services on an ad hoc basis. With the creation of DTS, we are developing mechanisms and processes, jointly with the State CIO, that will give our customers an integral and ongoing role in our service planning. These processes include:

- *Creation of a Customer Council and a Director's Advisory Board.* We recognize the need for increased and ongoing input from our customers in all aspects of our business. These two groups, which will be formed within the next few months, will provide an important mechanism for increasing customer input. Comprised by a cross-section of DTS customers, the Customer Council will address departmental technology issues. Agency Information Officers will compose the Director's Advisory Board to address how DTS responds to broader State technology issues.
- *Develop a Planning Process for IT Services.* The DTS recognizes the need to develop a strategic IT plan for shared services. Over the next few months, we will develop a process for creating such a plan. One of the most critical aspects of this process will be input from our customers on

their strategic business direction and technology needs that we must be prepared to address. Because customer input is critical to this process, we will involve the Technology Services Board, the Customer Council, and the Director's Advisory Board.

- *Creation of a Customer Delivery Division.* A few months ago, we created our Customer Delivery Division with the primary responsibility of addressing our customer's IT needs. This division is involved in a number of efforts aimed at increasing customer communication to allow us to be responsive to their needs. To that end, we plan to evaluate our communications, establish performance metrics, and enter into service level agreements with our customers.

8. What are the greatest technology issues facing the state in the next five years? What is DTS doing to prepare? What is your role in helping address those issues?

The four greatest technology challenges facing the State are:

- *Plan for the Retirement of State Staff.* The turnover of State staff due to retiring baby boomers is a phenomenon affecting both public and private sector. The DTS intends to address this issue through two efforts. First, as described earlier, we will work with DPA and SPB to find creative ways to reach out to recent college graduates and private sector IT professionals. Second, we will work with our customers to make "shared services" available on a cost effective basis. This should reduce the needs of our customers to duplicate these services within their own organizations and the staffing requirements for their support.
- *Implement New Technologies to Better Serve Californians.* The Internet and other communications technologies provide the opportunity to provide government services "anytime, anyplace". In addition, newer technologies provide an opportunity to make government workers more productive. In order to nurture innovation and the effective use of new technologies, we have developed an innovation lab that we use to demonstrate and test new technologies.
- *Preserve the Privacy and Security of Government Data.* One of DTS' major responsibilities is to ensure the integrity of the State's data and preserve the privacy of Californians. There are thousands of attempts every day to hack into state systems, and identity theft is becoming an ever-increasing risk. In our capacity for the delivery of the state programs, we must exhaust all necessary precautions to protect the state's IT infrastructure and preserve the privacy of sensitive information. This will be achieved by our continued use of the latest security tools and

techniques, formulating security and data protection policies, and implementing technical controls.

- *Governance of IT in the State.* There is a critical need to formalize the role of the State Chief Information Officer (CIO) to provide adequate policy guidance and coordination of IT efforts in the state.

May 18, 2006

The Hon. Don Perata
Senate Rules Committee
State Capitol
Sacramento, CA 95814

Dear Chairman Perata:

The purpose of this letter is to outline for the Senate Rules Committee my short and long term goals for the California Student Aid Commission ("Commission"). First, I should note that I believe strongly in the organization's mission of making higher education accessible to all Californians. My specific aspirations for the Commission are detailed below:

- Ensure that the Commission effectively and efficiently administers the Cal Grant, California Student Opportunity and Access Program (Cal SOAP), Assumption Program of Loans for Education (APLE) and other various student financial aid programs.
- To embrace the results of the various audits of both the Commission and its auxiliary EdFund, and work to ensure that both organizations are focused and in accord with the needs of the State of California.
- Guarantee that the Commission and EdFund are both in full compliance with state and federal law.
- To continue and, indeed, surpass the success of EdFund in providing the State with much needed financial resources and loan services.
- To work with the Legislature, the Governor, the U.S. Dept. of Education, high school counselors, universities, community colleges, proprietary schools, student financial aid associations and students to ensure that the State of California is offering our students as much free money for college as possible.

I greatly appreciate the opportunity to have served the State thus far; I hope that the Senate Rules Committee will afford me the opportunity to continue that service. Thank you for your time and consideration.

Sincerely,

Rory Diamond

MAY 18 2006

May 18, 2006

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

**Althea Burns
Rehabilitation Appeals Board
Goals**

Re: Confirmation for Althea C Burns, Department of Rehabilitation Appeals Board

Distinguished Members of the Senate Rules Committee:

As an appointee of Governor Schwarzenegger to the Department of Rehabilitation, I am very honored to have the opportunity to provide information to the Senate Rules Committee about my goals as a member of the Rehabilitation Appeals Board. Of great concern when I was first appointed last September was that there had not been a meeting on the DOR Appeals Board for several weeks in 2005. This resulted in the Board not being able to comply with state law to hold fair hearings within 45 days of written request filed by rehabilitation consumers. As the third member of the Appeals Board at that time, I was committed to attending as many hearings as could be scheduled each week so the back log of postponed hearings could be reduced. Today, through the dedication of the current board members, we are now in compliance of holding Fair Hearings within the requirements of Title 9 of California Code of Regulations.

Being afflicted with a physical medical condition that affects muscles and nerves since 1984, I understand the challenges of working and living with a disability and I know that success begins with personal responsibility. I believe very strongly in the value of people with disabilities and appreciate the opportunity of vocational training and education services provided through the Department of Rehabilitation. At times when grievances occur in a vocational plan, the consumer has the right to a Fair Hearing. The Board's role in the hearing process is to ensure the law has been applied in actions taken by the Department. It is my responsibility to be impartial and make decisions based on evidence and testimony presented by the Appellant and the Department Rehabilitation personnel.

Thank you for consideration to confirm me as a member of the Rehabilitation Appeals Board.
I look forward to serving the people of California.

Please contact me if I can be of any assistance to you.

I wish -

Althea C. Burns
Althea C Burns

MAY 18 2006

JOHN T. KEHOE

May 19, 2006

**John T. Kehoe
Rehabilitation Appeals Board
Goals**

**Hon Don Perata, Chair
Rules Committee
California State Senate
State Capitol
Sacramento, Ca. 95814**

Dear Senator Perata:

In response to your recent inquiry, I am most prond of my opportunity to serve the people of California on the Rehabilitation Appeals Board. As you know, I began my service in October of 2005. I was serving in a short term, expiring in December. I was most honored to have been re-appointed to the Board, and as chair in January ,for a new term.

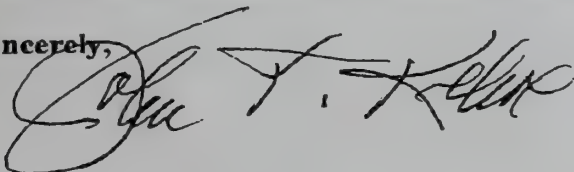
When I began, it was the first time in a long career of public service that I had the opportunity of working in the field of rehabilitation. The first factor which I discovered was a case load which had grown extensively for a variety of reasons, much of which was due to a lack of a quorum. My first goal was to work this case load down to a calendar which is within the statutory limit of 45 days from filing of the appeal to an actual hearing taking place. I am most proud of my fellow Board members and their intense cooperation in bringing this about.

A second goal would be to provide each appellant with a fair hearing. I always announce at each hearing that we represent a cross section of California's population from a variety of backgrounds, and that serving at the pleasure of the Governor and the Legislature we are free of any control by the Department of Rehabilitation. I would hope that this would be a continued direction which the Board would follow.

A third goal would be to develop a book of precedents, much like a legal code which would help determine the basis for past decisions and to see if there are any precedents which can be incorporated in future appeals. Hopefully this would establish historical perspectives and guidance to future boards and in the making of future decisions.

Briefly, the foregoing are immediate goals. I truly want my y ears of service to California to help in improving the well being of those in the rehabilitation client base. If more information is desired, I will be very pleased to provide it.

Sincerely,



MAY 22 2006

Peter Mendoza
Rehabilitation Appeals Board
Goals

Dear Honorable Senators:

Thank you for taking the time to consider my confirmation to the Rehabilitation Appeals Board. My short term goal for the Appeals Board is to work to make sure every appellant and the department receives a fair hearing in accordance with state and federal law. In this position I feel I bring my own personal experience living with a severe disability, who has had in the past been the recipient of services through various agencies and is a full contributing member of society. I have been active in public policy and am very familiar with the needs of consumers and the Department of Rehabilitation. It is my goal to always bring my unique combination of personal experience to the hearing and deliberation process.

My long term goal, I believe that in order for consumers and the Department of Rehabilitation to feel our process is truly fair, the appeals board must be completely separate from the Department. My goal is during my tenure to explore innovative ways to accomplish this.

Thank you again for your consideration of my confirmation request. If I am confirmed, I will do my very best to uphold the rights of consumers and the Department of Rehabilitation.

Peter Mendoza

Cathleen Poncabare
Rehabilitation Appeals Board
Goals

In response to the letter from Senator Perata, as you are aware, the role of the seven member RAB who are appointed by the Governor is to conduct fair hearings at the request of appellants who have taken issue with the method in which services have, or have not, been provided by the Department of Rehabilitation (DOR). My short term goal as a member of the Board is to ensure consistency in terms of how the fair hearings are conducted. Although the fair hearings are considered informal, I think the process should be taken more seriously than what the practice has been in the past given the impact of our rulings on the appellant and/or the DOR. As far as my long term goal, I want to continue to perform my role as an objective member of the RAB to ensure the outcome of each hearing is considered fair from all of the participant's perspectives.

Please let me know if you need this in letter format.

Thanks for your patience.

Cathleen Poncabare

Member

Rehabilitation Appeals Board

Sent from my Verizon Wireless BlackBerry

May 22, 2006

Don Perata, Chairman
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814-4900

Re: Claudia C. Richards, Appointee to the Rehabilitation Appeals Board

Distinguished Members of the Senate Rules Committee:

I am honored to provide my short and long term goals as a member of the Rehabilitation Appeals Board:

At the time of my appointment in October, 2005, time was of the essence. The Appeals Board was overburdened with a back-log of cases and unable to adjudicate disputes in a timely manner due to lack of a Board quorum. Immediately, it was necessary to employ all reasonable means to remedy this unacceptable situation. I am proud to say that along with my dedicated colleagues, we have met this short-term goal. I am committed to the Board continuing dispute resolution in strict accordance with the law.

Although I have administrative law experience, my legal background was largely in the area of contract law. It was imperative to quickly gain a working knowledge of pertinent State and Federal law to fulfill the duties of my appointment by providing full and fair hearings for the Department of Rehabilitation and the Consumer (Appellant). This initial quest has been met; however, each hearing is unique in its facts and circumstances. Please be assured over the course of my term, I will work hard to achieve greater expertise and stay abreast of current State and Federal Law, including internal directives issued by the Department, which serve as guidance to our endeavors. I consider it a great honor to pursue my learned profession in public service.

As a gubernatorial appointee, I am entrusted to protect misuse of this quasi-judicial process and ensure its success by avoiding the appearance or practice of partiality to either the Department or the Consumer (Appellant). I have been commissioned to hear testimony; consider the evidence; thoroughly investigate and test arguments by probing questions; carefully participate in the deliberation process; make findings supported by the law; and finally to issue an order to the Department according to applicable law.

Keeping in mind the vulnerability of disabled persons, my long term goal is to honor the letter and spirit of my Oath and to promote justice and the public good through ethical and consistent practice with competence, civility and service to the public.

There are no changes to my Form 700.

Sincerely,

Claudia C. Richards

MAY 22 2006

Gael H. Troughton

**Gael H. Troughton
Rehabilitation Appeals Bd.
GOALS**

May 14, 2006

Don Perata, Chairman
Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814-4900

Dear Mr. Perata:

RE: my goals, and confirmation hearings as a member of the
Rehabilitation Appeals Board

It is an honor to serve on the Rehabilitation Appeals Board, and a responsibility, which I take with great seriousness. This is my second appointment to this board, my first being from 1996 to 2001. I served as board chair for 2 years, from 1998 to 2001.

The current appointment was presented to me, as a result of the need to add members, due to the lack of a quorum (late 2005) on the board. Although, I work full time in the technology industry, I feel it is my obligation to take on this appointment, because I believe in the Rehabilitation Board's mandate. The board had a tremendous backlog of hearings (late 2005), and it was my immediate and short-term goal to see that this backlog was eliminated, and to get the board back in compliance with the statute. I am proud to say that the board is now back in compliance.

My long term goal for the board is as follows: to ensure that we continue providing hearings in a timely fashion, ensure the board operates in an honorable and consistent manner, and most importantly, the board provides the disabled community with fair and lawful hearings.

Regarding my Form 700, there are no changes necessary.

Thank you for this opportunity to speak about my goals for the Rehabilitation Appeals Board. It would be an honor to be confirmed by the California Legislature, as a member of this board.

Respectfully yours,

Gael H. Troughton
Member, Rehabilitation Appeals Board

MAY 24 2006

540-R

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14
15 WEDNESDAY, JUNE 7, 2006

16 4:00 P.M.

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24 Reported by:

25
26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

DELPHINE L. SAYLES-OWEN, Division Chief
Community Partnerships, Adult Programs
Department of Corrections and Rehabilitation

GREGORY SENEGAL
AAAOD

JOYCE E. ARRENDON, Member
Board of Parole Hearings
Juvenile Parole

CHARLES J. SUPPLE, Member
Board of Parole Hearings
Juvenile Parole

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have three individuals today. We'll begin about a four-week marathon of Department of Corrections appointees.

As an overall statement, and this is not intended for individuals here necessarily or at all, the so-called reorganization took place in July, and we've been looking carefully for any signs of progress.

But what we are getting instead are far too many vacancies in the key positions. In fact, we have a lot of people acting as temporary department heads or temporary chairs.

Any time the word is temporary, it means that you don't have much authority, and nothing worse than having to try to marshall your forces against people who are there permanently and you're not. So, this has caused the Rules Committee to become very concerned about this.

It's not our intention to take it out on anybody individually, so don't run out the door yet. But we are asking -- at least until Senator Bowen gets here. She won; you'll be fine.

[Laughter.]

CHAIRMAN PERATA: So, questions that we would like to have addressed by all of you: how and when are things changing for the better? I hope that takes a long time to answer. How are we measuring change? How do we quantify it? How does this translate into improved public safety? Now,

1 that's obviously from the perspective of the world view that you
2 have.

3 We've been in very close contact with Senator
4 Machado, who's been examining these issues thoroughly through
5 the process of Budget Sub Four. And we are asking people to
6 provide written answers and materials so that we can use those
7 responses, together with the information that is being provided
8 during the budget process.

9 We've also been in contact, and have had, in
10 fact, a couple of people here a couple weeks back who are
11 serving as agents of the trustee that is overseeing the health
12 care system.

13 So, this is a very complicated area. This is a
14 huge burdensome responsibility for this Governor, and it will be
15 for the next governor, whoever that person is. It's an \$8
16 billion budget, and there are 58,000 employees, and
17 180-some-odd-thousand incarcerated.

18 The job that you're taking, why ever you're
19 taking it, thank you. We have no psychological expertise here,
20 so we're not going to try to evaluate why you took it.

21 We would like you to come forward. Delphine, you
22 come first, then we will have the other two come forward.

23 So with that preamble, welcome.

24 MS. SAYLES-OWEN: Thank you.

25 CHAIRMAN PERATA: Tell us a little bit about
26 yourself, why you're doing this.

27 MS. SAYLES-OWEN: Good afternoon, Senator Perata
28 and Members of the Senate Rules Committee. It's an honor to be

1 here in front of you today.

2 And I ask for your support in confirming me as
3 the Director of the first ever Division of Community
4 Partnerships.

5 I would like to take a little time to talk about
6 my background and my vision for the position.

7 I began my career in state service 29 years ago.
8 I had a strong commitment to policies and programs that
9 strengthen families and communities. My work has led me to
10 understand and appreciate the distinct roles that the private,
11 public, and nonprofit sectors have. One of the tests of a good
12 administrator is to know when our private partners should be
13 brought in to work with us.

14 The department has had a history of being hard to
15 help, and it is my goal to change that. In my first eleven
16 months, I've been privileged to work with the many dedicated
17 staff of the department toward developing new collaborative
18 efforts. I have met with many organizations that really, truly
19 are eager to partner with us. My office has been contacted by
20 over 60 organizations. Many of them seek to provide services to
21 us under contract. However, half of them are not asking for
22 funding. All they're merely asking for is access to our
23 offenders as part of fulfilling their own organizational
24 missions.

25 Now, it's important that we build upon this
26 incredible momentum, and as the department rolls out its
27 strategy to expand programming, my division will utilize the
28 generosity of the communities around our prisons and those to

1 whom the offenders are returning.

2 Much of our effort to date has been dedicated to
3 staffing and building up our organization. However, I am proud
4 of the initiatives we've undertaken with our very limited
5 staffing. For example, the division is coordinating with four
6 local organizations that have received federal grants to support
7 reentry efforts. My division applied for a state grant that
8 corresponds with the one that the locals received.

9 The division is also leading a couple of major
10 efforts to implement collaborative partnerships in two counties:
11 San Diego County and Santa Barbara County.

12 Now, over the next year we will promote community
13 investment in the successful reintegration of offenders. And it
14 is my goal to expand inmate self-help programming, and I want to
15 improve inmate access to religious programs. Our plan is to
16 increase the communication and collaboration between state
17 agencies.

18 We also plan to promote innovative reentry
19 programming. The Governor's budget includes \$4.2 million in
20 fiscal year '06-'07 for the division to administer grants that
21 promote shared responsibility for offender reentry.

22 Now, as a follow-up to community input received
23 earlier this year, we plan to convene a statewide community
24 collaborative meeting in the next few weeks. My goal is to
25 improve the level and the quality of communication between the
26 department and stakeholder groups.

27 We recognize that there are many areas that we
28 need to improve in. And the institutions are, in fact,

1 operating with unprecedented overcrowding and high staff
2 vacancies. And I will be working alongside with Adult
3 Operations as it attempts to address the impact of these
4 challenges.

5 And through all of the efforts that I've outlined
6 above, we will move forward to fulfill our mission to improve
7 public safety through evidence-based crime prevention and
8 recidivism reduction strategies. And I do look forward to
9 working with the Legislature, our external stakeholders, and all
10 of the hard working staff in the department towards this end.

11 You asked a few specific questions in terms of
12 how and when are things going to change within the department.

13 I am very pleased to report that the department
14 has in fact appointed a chief deputy secretary over adult
15 programs. This appointment comes as a great relief to me --

16 CHAIRMAN PERATA: Let me get my flow chart out
17 here. Okay.

18 MS. SAYLES-OWEN: As you are probably aware, I
19 was performing two jobs. I was Acting Chief Deputy Secretary of
20 Adult Programs, and I was also doing the job of Division of
21 Community Partnerships.

22 Now that Sela Montez has been appointed, I'm very
23 happy to be doing one job. And I am very happy to have a very
24 capable professional who's experienced in both parole and
25 institutions on part of the management team. And I think our
26 progress will be greatly enhanced by her coming on board.

27 We've had a few vacancies, you've noted. We
28 still have a Division of Education, Vocation, and Offender

1 Programs. That recruitment is still occurring, but in the
2 meantime, we have brought on a retired annuitant to serve in
3 that leadership capacity. It's a very important area, and we
4 will not survive if we do not have capable leadership over both
5 education and other offender programs, such as substance abuse.

6 With regard to my organization, I mentioned that
7 we're still growing. We started off small but mighty, and we
8 are in fact filling vacant positions. We are totaling eight
9 positions in terms of those that were originally granted, and
10 some redirections, and the Governor's proposal -- Governor's
11 budget contains a proposal for six additional positions, to
12 bring us up to a total of fourteen.

13 And we anticipate with the agenda that's laid out
14 in the Governor's budget, that you will see some pretty exciting
15 things happening.

16 As I mentioned before, we're going to be doing
17 some pilot projects and intergovernmental grants. We're going
18 to be targeting those communities and government entities that
19 are poised to create community roundtables around reentry. And
20 we want to provide incentives for them to do that.

21 We also included in the budget money to pay for
22 volunteer sponsors. We really do have a desire to increase the
23 amount of self-help programming that's available within the
24 institutions, and one of barriers is getting the staff sponsors
25 that are needed in order to support those twelve-step programs
26 that occur in the institutions.

27 Another part of our agenda is to create a
28 couple -- a pilot program using what we're calling community

1 partnership managers. Now, the department at one point had
2 community resource managers in every institution, and because of
3 tough budget times, they made hard decisions. And one of the
4 things they got rid of were the community resource managers.

5 Now, I've talked to lots of community groups.
6 I've been in community sessions. And one thing that's been made
7 clear to me is that everyone is heralding the return of those
8 positions and that function. So, we do have a proposal to
9 institute a slight variation of the community resource manager,
10 and we're going to call it the community partnership manager.
11 In addition to coordinating the resources coming into the
12 institution, we will be asking these managers to also work with
13 the community on reentry efforts as well. So, we're kind of
14 broadening the scope and responsibility to encompass reentry.

15 So, we're looking at three sites in our pilot,
16 and so hopefully we'll see success in that, and then we'll
17 expand that.

18 So, those are just a few of the highlights of the
19 things that we have on our agenda for the budget. And we also
20 are going to be meeting with our stakeholders, really kind of
21 going over many of their concerns. A major concern has been
22 access. If anything that is a consistent theme amongst the
23 organizations, whether they be contractors or volunteers, is
24 they have difficulty gaining access to the institutions. So,
25 one of our goals is to really get rid of the barriers, provide a
26 more satisfactory and even experience for people who are trying
27 to get inside the institutions to provide us that help.

28 And one of the concepts that's been floated in

1 the department before is a universal ID card. Now, we're going
2 to dust that off, because it got put aside because of funding
3 issues, but I think it offers some real promise in terms of us
4 moving forward to increase and improve the access for the
5 external groups.

6 You asked about how we're going to measure
7 change. Within the Division of Community Partnerships, we're in
8 an interesting position because we don't directly implement the
9 programs, but what we do is make sure that the collaborative
10 partnerships are in place to facilitate those programs being
11 implemented.

12 So, some of the measures that we're going to be
13 using are the numbers of collaborative agreements that we enter
14 into with local governments. And right now, we have about 14
15 local entities that are standing, wanting to do some sort of
16 partnership and have us at the table as they start to look at
17 reentry. We've got about 12 counties and 4 cities.

18 And I do expect that list to grow. And I'm very
19 enthused about the fact that the list is as long as it is. Our
20 challenge is, as that list grows, really keeping up with the
21 demand.

22 I'm optimistic that between Division of Community
23 Partnerships along with our Division of Parole Operations, that
24 we will be able to be at the table in these communities in a
25 meaningful way.

26 We're also going to measure the amount of
27 self-help offerings that we get as a result of some of our
28 improved processes. We have baseline data on what's being

1 offered in the institutions now, and we're going to be measuring
2 our progress against that baseline data.

3 Another thing that we want to do is institute
4 some feedback from our stakeholders. How better to know how
5 they feel about how things are going than to ask them. So,
6 we're going to be utilizing some surveys in order to get that
7 kind of feedback.

8 So, those are a few of the highlights of how we
9 plan to measure our progress in the next coming year.

10 And your third question was about how does all of
11 this impact public safety.

12 We really believe that successful reintegration
13 is really a shared responsibility. CDCR, Corrections, cannot do
14 it alone, and so it is very important for us to sit down with
15 the locals who are struggling with the same issue. Our parolees
16 are filling up their jails. They're ready to do something
17 different. They know something has to change. We can't
18 continue to be in the adversarial relationship that we've been
19 within the communities, and so they're ready to open up this
20 dialogue.

21 In San Diego, they have a model that -- it's
22 going to start with parolees, but they really have a vision of
23 including probationers as well. So does Santa Barbara. I've
24 been to Shasta. They had their first community roundtable, and
25 they're looking at building a new jail, and they're wanting to
26 look at how they can use that jail to help with issues around
27 parolees and probationers as well.

28 So, I think that law enforcement in a lot of our

1 localities are really engaging with us in some very unique ways
2 to make sure that we are about the business of improved public
3 safety.

4 CHAIRMAN PERATA: Could I ask you, just because
5 we've got a couple of Republicans on the dais, and if you're
6 talking about collaborative partnerships, and stakeholders, and
7 feedback, they may not vote for you.

8 Welcome and congratulations.

9 SENATOR BOWEN: Thank you. I brought my own
10 confetti.

11 [Laughter.]

12 CHAIRMAN PERATA: You did. That's good. It's
13 very appropriate.

14 Give me an example. If you were going to, in
15 your mind's eye, view a successful program, take a couple of
16 guys coming out. What would it look like? What would they do?

17 MS. SAYLES-OWEN: The best example that I can
18 give is what San Diego has put together under a recently enacted
19 bill, SB 618. That bill allows for a county to take over the
20 assessment responsibilities that we normally do at CDCR.

21 What that means is, in our reception centers,
22 like R. J. Donovan, we have people that are staying there
23 inordinate lengths of time because of the overcrowding.

24 What San Diego has proposed is that they will
25 actually do that assessment, and actually do the things that
26 they normally don't do now but are required by CDCR. They start
27 that while the person is still in their custody. They do an
28 assessment. They'll make a recommendation to CDCR about the

1 programming that this individual is going to need. They're
2 going to establish a case manager right at the beginning that
3 really does a complete assessment and case plan. They'll have a
4 case plan manager on the outside while the individual is going
5 through our institution.

6 Now, one of the advantages about this design is
7 that as soon as they've done their assessment and their
8 recommendation, it will mean that when they arrive into our
9 system, they don't have to sit in the reception center. They
10 can move straight into program. And this will be a tremendous
11 asset to us, and also for the community because they have a real
12 investment of these individuals coming out better than what they
13 were when they went in, and certainly not any worse off.

14 So, that means that CDCR has to make a commitment
15 to provide those programs that are deemed necessary in the
16 assessment. We've organized a team of people from CDCR, our
17 substance abuse folks, our health folks, really trying to build
18 that programming for those individuals that have sentenced in
19 San Diego and are coming through this system.

20 They'll be there on the back end. They'll start
21 pre-release six months before, planning for their return.
22 They'll have that same case manager who has been involved with
23 this individual from the very beginning there on the back end.

24 So, that's a model that we are really excited
25 about. We know that there are other counties that are
26 interested in trying this model, and there will be a complete
27 evaluation on the design. And we're extremely hopeful that it
28 will be up in October of this year. They're going to start

1 small with about 200 individuals per year, and they will grow
2 over this multi-year effort.

3 CHAIRMAN PERATA: Does the case manager work with
4 probation and the parole officer?

5 MS. SAYLES-OWEN: The case manager will work with
6 the parole officer. And actually, I think it will be an asset,
7 a help for the parole officer, because that case manager will be
8 doing a lot of things that a parole agent has not had the time
9 to do with their current caseloads.

10 CHAIRMAN PERATA: The grants, that \$4.2 million
11 in grants, how fast can you get that out the door, that money?

12 MS. SAYLES-OWEN: Our goal is to get that out on
13 the streets by December.

14 CHAIRMAN PERATA: Okay.

15 Any other questions?

16 SENATOR ASHBURN: I just want to follow-up on the
17 partnership, Mr. President, if I can, and the measurement of
18 success.

19 Do you view the measurement of success in the
20 number of partnerships that are developed, or in the number of
21 inmates that are available to move successfully in transition?

22 MS. SAYLES-OWEN: Well, we're going to have
23 two-part measures. One, we're we going to measure, if you will,
24 the process. And the process is, how do you get people to the
25 table and get them engaged at the community level. So, we do
26 want to measure that part.

27 One of the premises is, if you do get the
28 community investing, and you get expanded programs, we ought to

1 see improved outcomes in terms of offender performance in terms
2 of recidivism rates and revocation rates. So, we'll be tracking
3 the whole continuum of activities in that progression.

4 But we're -- I would consider us sort of a front
5 end piece in terms of putting together the collaboratives
6 necessary to build the programming and to get the resources into
7 our institutions and our parole regions.

8 SENATOR ASHBURN: You talked about the adult
9 population. Do you have similar responsibilities for the
10 juvenile population?

11 MS. SAYLES-OWEN: Well, we -- technically,
12 Division of Community Partnerships is under Adult Programs, and
13 that's the way it was in the law.

14 But what we have found is that as we're dealing
15 with all of the community-based organizations that want to do
16 business with, the Department of Corrections and Rehabilitation,
17 many of them do not make the distinctions that we make when it
18 comes to 18 to 24 year olds. It doesn't matter whether they
19 were adjudicated in the juvenile system or the adult program.
20 They are adults to these individuals.

21 So, we are in fact having conversations with
22 organizations that want to service that population, and we are
23 in our beginning stages, if you will, of building that
24 relationship with Juvenile Justice in terms of how do we
25 coordinate getting these individuals involved in the Juvenile
26 Justice delivery system.

27 SENATOR ASHBURN: Thank you very much.

28 CHAIRMAN PERATA: Nothing further?

1 Do you have any family here that you want to
2 torture?

3 MS. SAYLES-OWEN: I have one family member that
4 I'd love to introduce, and that is my husband, David Owen.

5 CHAIRMAN PERATA: Welcome. You prepped her
6 really well. She did a really good job.

7 This is an enormous undertaking. Some of us who
8 believe in redemption would like to see that "R" in Corrections
9 and Rehabilitation grow to at least a proportionate size.

10 I not only wish you well, but I would hope from
11 time to time that there'd be some way to communicate how things
12 are going.

13 Is Santa Barbara one of the other counties you're
14 going to do?

15 MS. SAYLES-OWEN: Santa Barbara and --

16 CHAIRMAN PERATA: And Shasta is the third, or is
17 that a --

18 MS. SAYLES-OWEN: Shasta is a county that is just
19 beginning. We've also been meeting with Los Angeles County, so
20 our list is growing. I'm going to San Mateo on Friday. That
21 will be our first meeting with them, and San Francisco also is
22 putting together a plan.

23 So, we've got lots of efforts going on, and we
24 can keep you apprised of how those progress.

25 CHAIRMAN PERATA: I'd appreciate that, thank
26 you.

27 Do we have a motion?

28 SENATOR BATTIN: We do.

1 CHAIRMAN PERATA: Anybody here, pro or con?

2 MR. SENEGAL: Senator Perata, it's been a long
3 time.

4 CHAIRMAN PERATA: It sure has been.

5 MR. SENEGAL: Senators, my name is Greg Senegal.
6 I'm a long-time Bay Area resident, but I'm also now a Los
7 Angelinan.

8 CHAIRMAN PERATA: I'm sorry.

9 MR. SENEGAL: Yeah, I know.

10 And we're here to support Del. We sent some
11 letters to you.

12 And we think that the "R" is extremely
13 important. We are at Ground Zero in Los Angeles. I'm currently
14 working in South L.A. and we are faced with a deluge of folks.

15 And I was thinking as I was coming up with my
16 sons yesterday that, you know, we don't talk about homeland
17 security, but if you have individuals who are in a desperate
18 strait and basically are parolees, are sent back to downtown and
19 South Los Angeles, the poorest economic conditions, poorest
20 infrastructure, we're talking about numbers of 40,000 people in
21 a very close proximity.

22 What we have to look at as a society is how do we
23 build those structures? Del has been coming to us, and she's
24 been working along with us. We've got 67 providers. We've got
25 55 faith community partners.

26 And Del and the department under this
27 administration believe that, hey, maybe there's a different way
28 to do this. Maybe what we're looking at in terms of public

1 safety is the development of an environment, not just releasing
2 people to end up on the social rolls that impact the hospitals,
3 impact the quality of education for our kids, impact the
4 streets, you know, as little as street lights.

5 What people don't understand, all of the things
6 that we put into sending people through a cycle reduced our
7 abilities to improve our environments and give what is important
8 to me, my children, an opportunity for a wonderful future.

9 The same is the case in east Oakland.

10 Therefore, I'm here today primarily as a
11 long-time friend, but more importantly, as someone who is
12 standing up saying, this is the right thing to do, and this
13 person is the very first one. The first always sets the
14 foundation for all that will come after.

15 So, I would ask that you would support Del. I
16 know she's supporting us. You know, there are some tough days,
17 but partners get through that.

18 SENATOR BATTIN: Who is "us?"

19 MR. SENEGAL: That would be myself, African
20 American Alcohol and Other Drug Providers in South L.A., Los
21 Angeles Metropolitan Churches, many of the treatment community.
22 I've been in the treatment community for last 20 years. I
23 helped build the largest treatment provider in the state.

24 So, there are many individuals that are -- who
25 went to the polls last night to vote. Many of us put people in
26 vans, did absentee ballots, and they all believe one thing, and
27 a lot of the people that we're dealing with. They don't see
28 these individuals as inmates. They see them as their son

1 Johnny; their great-grandson Jimmy, who's coming home.

2 And, you know, they need to give them a way to
3 stabilize before they can welcome them back into their arms.
4 Now, you know, we have folks that are doing stuff with chewing
5 gum and paper clips to provide services for folks.

6 If you look at what the investment is for the
7 state, I would venture to guess that you have as much investment
8 in communities that people never see in the newspaper, never
9 hear about, that are trying to do the same thing.

10 We just think that this is a great opportunity to
11 marry all that.

12 CHAIRMAN PERATA: Thank you for being here.
13 Appreciate that very much.

14 Anyone else?

15 With that, please call the roll.

16 SECRETARY WEBB: Ashburn.

17 SENATOR ASHBURN: Aye.

18 SECRETARY WEBB: Ashburn Aye. Bowen.

19 SENATOR BOWEN: Aye.

20 SECRETARY WEBB: Bowen Aye. Cedillo.

21 SENATOR CEDILLO: Aye.

22 SECRETARY WEBB: Cedillo Aye. Battin.

23 SENATOR BATTIN: Aye.

24 SECRETARY WEBB: Battin Aye. Perata.

25 CHAIRMAN PERATA: Aye.

26 SECRETARY WEBB: Perata Aye. Five to zero.

27 CHAIRMAN PERATA: Congratulations.

28 MS. SAYLES-OWEN: Thank you very much.

1 CHAIRMAN PERATA: Next we have Joyce Arredondo
2 and Charles Supple. Come forward, please. Thanks for being
3 here, appreciate it. Welcome.

4 Joyce, you get to go first.

5 MS. ARREDONDO: Thank you, Senator.

6 I want to begin just by saying thank you for the
7 opportunity to address you. I'm honored to be here again today.

8 When I accepted my original appointment
9 approximately two-and-a-half years ago, the board had just
10 undergone some changes with the implementation of Senate Bill
11 459. Since my appointment, the board has continued to go
12 through many changes and improvements, and I am proud that I
13 have been an active participant in many of them.

14 I've been part of the committee that worked on
15 the transition to the new California Department of Corrections
16 and Rehabilitation, and the formation of the Youthful Hearing
17 Services Division of the Board of Parole Hearings.

18 I also participated in a multi-disciplinary group
19 that addressed the need for effective transitional programming
20 for sex offenders.

21 Because of my many program visits and
22 conversations with both wards, parolees, and staff in both the
23 institutions and out on parole, I've been able to offer DJJ
24 administration creative strategies and recommendations as they
25 continue to implement improvements in the department.

26 If afforded the opportunity to continue to serve
27 as a member of Parole Hearings, Youthful Offender Hearing
28 Services, I'm committed to continuing in this role during this

1 time of transition as I serve the citizens of this great state
2 in this important public safety position.

3 Thank you.

4 CHAIRMAN PERATA: Your turn.

5 MR. SUPPLE: Senator Perata and Members of the
6 Rules Committee, I also thank you so much for the opportunity to
7 come here today and speak to you. It's been about
8 two-and-a-half years as well for myself since I was before the
9 Committee and confirmed to serve on what was at that time the
10 Youthful Offender Parole Board, and then became the Youth
11 Authority Board, and now the Board of Parole Hearings. But it's
12 all been about doing the same job.

13 I came to -- prior to coming to the board, I had
14 a twenty-year experience working in the field of creating
15 opportunities for young people to be involved in their
16 communities, doing community service, both in the State of
17 California, working through the California University systems,
18 creating opportunities for young people or students to serve the
19 community, and then in the first President Bush administration,
20 heading up the youth programs at the Points of Light Foundation,
21 then in the Clinton administration, helping to set up
22 AmeriCorps. And just prior to coming to the board, overseeing
23 the AmeriCorps program for the State of California. So, I had a
24 20-year experience working with young people responding to their
25 better natures in the community.

26 When the opportunity came along to work with this
27 population, it certainly was a 180-degree turn in terms of
28 working with young people who were responding from a very

1 different set of instincts and values in the community. I have
2 approached that job, which I see as and have experienced as
3 really an awesome and serious responsibility for the state, with
4 as much humility as I could.

5 When I first came here to the Committee, I laid
6 out my objectives for my term of service. One of those was that
7 I would learn as much as I could about doing the job of a board
8 member, and about the work of the Youth Authority, which is what
9 it was called at the time.

10 I believe I have been able to achieve that. I
11 have learned a great deal about the services and programs
12 offered at the Youth Authority, now the Division of Juvenile
13 Justice, and about how to be able to do the job of conducting a
14 hearing and attempting to make a critical, and serious, and
15 sobering decision about whether or not it's safe to return a
16 young offender to the community or to return them back in the
17 institutions if there are accusations that they have violated
18 their parole.

19 I also set out that I would try to build as many
20 positive relationships within the board as well as within the
21 institutions in order to be able to learn more about what is
22 being offered through the institutions and to be able to do my
23 job. And I have had the opportunity to meet hundreds of people
24 working within the Youth Authority, and working on the Board of
25 Parole Hearings, and have been able to utilize those
26 relationships as resources, I think, to be able to make better
27 decisions, and then also to be able to conduct fair and
28 responsible hearings.

1 And the best teacher of that has been through
2 experience. And I have conducted literally thousands of
3 hearings of a number of different types and believe that I have
4 learned about how to do that. Ultimately, the impact of those
5 hearings are -- have a lot of different variables involved, but
6 I have come to learn how to conduct those to the best of my
7 ability.

8 The last was to try to build relationships in the
9 community to try to leverage resources and experiences in my
10 past life to benefit the Youth Authority, the Division of
11 Juvenile Justice, and I've been able to do that as well. I've
12 helped develop a program that is now in the planning stages that
13 will try to get more out of involving young people in the
14 institution as well as on parole in community service activities
15 that are truly going to be reflective of the restorative justice
16 principals and have as great -- as much of an impact on their
17 own development as possible, as opposed to just doing some
18 community service as a punitive measure just to get some hours
19 out of them or the like.

20 Approaching the next phase, if I'm allowed the
21 opportunity to continue to serve, I want to continue to learn as
22 much as possible about the reforms that are taking place. As my
23 colleague Joyce said, as well as myself, we've had the
24 opportunity to participate in a number of the -- in a lot of the
25 planning of those reforms, and I'd like to be a part of helping
26 to try to implement them and better coordinate them with the
27 work of the Board of Parole Hearings. And to be able to help as
28 new members come on, we need a few more, to train and to support

1 their development as hearing officers, as commissioners, and to
2 be able to continue to try to leverage relationships and
3 resources from the community to build on the type of restorative
4 justice programs that I have been talking about.

5 So, I really am pleased to have the opportunity
6 to come here and report on the first two-and-a-half years, and
7 to try to make a case for and help you with your decision about
8 whether or not I should continue in this role.

9 CHAIRMAN PERATA: How do you make an evaluation?
10 If you can characterize having a ward in front of you, and
11 you've got to make a determination, how do you evaluate that?

12 MR. SUPPLE: Well, there's a certain framework
13 that I think we both use in terms of having the ward come to us,
14 and to be able to talk to us about what was it that he or she
15 did that brought them to the Youth Authority. And you listen
16 very closely in terms of their relating the event, the
17 committing offense, as well as their other offenses and
18 activities for any type of minimization.

19 We have all the records and have read through
20 them in terms of the police reports and everything else, so
21 we'll know if they are minimizing, or not owning up to
22 everything that they did.

23 And then to talk to them about what was the
24 impact of your actions. And there you're looking for the impact
25 on the victims, an understanding of what victims did you create.
26 And it's not just the sole and obvious victim, but the
27 community, and all of the related individuals and the like that
28 they should be able to talk about.

1 And then to cover questions having to do with,
2 why did you do this? And there you're looking for what programs
3 did they participate in; what insight do they have as to what
4 prompted that behavior, what contributed to the behavior.

5 And then to begin talking about, what have you
6 done, what have you learned, what skills do you now have, tools
7 do you now have that's going to prevent you from being able to
8 do that again. So, depending on the type of offense, what was
9 involved, they should have a drug and alcohol relapse plan. If
10 they're sex offenders, they should be able to talk about their
11 sexual assault cycle, as well as their relapse plan with regard
12 to that.

13 And then you talk about where are they going on
14 parole. Does it makes sense where they're going to be paroled
15 to, that it's going to be able to support and continue the good
16 behavior that potentially is going to get them paroled in first
17 place.

18 All of that is a framework that we use. There
19 also is a certain gut instinct. You know, through a long
20 conversation to try to elicit, as much as possible, the truth,
21 and to get a sense of, are they telling you the truth, or is
22 what they're saying, do they believe? And are the skills and
23 everything they're talking about just something that they're
24 producing or parroting that they heard in a class, or is it
25 really coming from a place in their heart and in their mind
26 where you know it's going to stick.

27 The other thing you look at is their behavior.
28 They might be able to tell you everything that you want to hear,

1 but if you look at their behavior history, particularly that as
2 they are approaching parole, it might tell another story in
3 terms of have they really internalized it.

4 CHAIRMAN PERATA: Tell me about add-ons. We're
5 seeing the length of stay now increasing. What's going on?

6 MS. ARREDONDO: The board is not directly
7 responsible for time adds. Under Senate Bill 459, that
8 responsibility was actually given to the staff at the former
9 California Youth Authority, Department of Juvenile Justice.

10 However, we inadvertently have some say in it
11 when a ward brings a case before us because they're appealing a
12 time-add decision by the staff of Department of Juvenile
13 Justice, either for a parole consideration date extension, so
14 they're asking us to look at the treatment and training logic
15 that the staff has given them, or for a behavior report, perhaps
16 they've done some sort of behavior and gotten a time-out for
17 that behavior.

18 We then look at that look at that. We look at
19 the evidence. We look at the fact finding that the staff at the
20 Department of Juvenile Justice has done. We talk to, bring in
21 witnesses if we have to. We review witness statements. We
22 bring in staff if we have to. If it's something such as perhaps
23 failing a drug test or something, and we need clarification on
24 how that drug test was administered, we can actually bring in
25 that individual, or the individual that does the disciplinary
26 time-add, the fact finder.

27 After reviewing all the facts, all the evidence,
28 after listening to the ward, then we make a determination

1 whether or not the time-out that the Department of Juvenile
2 Justice staff has given them, if their due process was made and
3 the facts are there, then we just uphold the time-out that the
4 staff has already given. We don't increase it, or anything such
5 as that.

6 CHAIRMAN PERATA: But is there a pattern now that
7 they're using time-adds more now than they have historically?

8 MS. ARREDONDO: I'm not sure that I could speak
9 to that, Senator. I'm not sure. What they had done previously,
10 it was the board that gave time. So, I'm not sure that the
11 staff at Juvenile Justice is giving more or less.

12 CHAIRMAN PERATA: Any questions?

13 Do either of you have family or anybody else
14 you'd like to point out? Not in general, but here.

15 MS. ARREDONDO: We have one person here in common
16 that we share. She was on the board at the time that both of us
17 came on, and so helped in part, trained us, and mentored us.
18 So, we want to start with her, and that would be Irene Raymundo.
19 She's now with what board? She's with another board.

20 And then I have my sister Sharon and my niece
21 Shanna here.

22 CHAIRMAN PERATA: Welcome.

23 MR. SUPPLE: My father, a former Deputy Sheriff
24 of Vermillion County, Illinois, and also a retired physician,
25 Dr. Charles Supple.

26 CHAIRMAN PERATA: Nice to see you.

27 MR. SUPPLE: Vermillion County, Illinois, it's
28 about 180 miles south of Chicago. We're from Danville.

1 SENATOR BOWEN: I'm from Rockland.

2 CHAIRMAN PERATA: I don't want to interrupt this.

3 [Laughter.]

4 MR. SUPPLE: It's kind of an Illinois thing.

5 CHAIRMAN PERATA: Anybody here who'd like to
6 speak for or against? Fabulous.

7 We have a motion to approve. Please call the
8 roll.

9 SECRETARY WEBB: Ashburn.

10 SENATOR ASHBURN: Aye.

11 SECRETARY WEBB: Ashburn Aye. Bowen.

12 SENATOR BOWEN: Aye.

13 SECRETARY WEBB: Bowen Aye. Cedillo.

14 SENATOR CEDILLO: Aye.

15 SECRETARY WEBB: Cedillo Aye. Battin.

16 SENATOR BATTIN: Aye.

17 SECRETARY WEBB: Battin Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Five to zero.

20 CHAIRMAN PERATA: Congratulations, both of you.

21 MR. SUPPLE: Thank you all very much.

22 MS. ARREDONDO: Thank you.

23 [Thereupon this portion of the
24 Senate Rules Committee hearing
25 was terminated at approximately
26 4:42 P.M.]

27 --ooOoo--

28

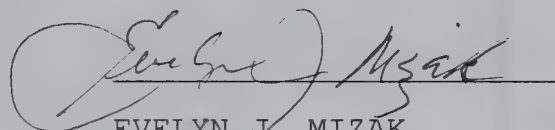
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of June, 2006.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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OFFICE OF THE SECRETARY

515 S Street, 95814
P.O. Box 942883
Sacramento, CA 94283-0001



May 3, 2006

The Honorable Don Perata
Senate Pro Tempore
State Capitol, Room 400
Sacramento, CA 95814

Attention Nettie Sabelhaus

Dear Senator Perata:

Attached for your consideration are the questions and answers provided to me in preparation for my upcoming confirmation hearing as Director of the Division of Community Partnerships, Department of Corrections and Rehabilitation.

Should you or your staff have any additional questions, please feel free to call me. I can be reached at (916) 323-6001.

Sincerely,

DEL SAYLES-OWEN

Director, Division of Community Partnerships

Enclosure

RESPONSES TO SENATE RULES COMMITTEE QUESTIONNAIRE

DEL SAYLES-OWEN, DIRECTOR DIVISION OF COMMUNITY PARTNERSHIPS CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

1. *As the first director of the division of community partnerships, what do you hope to accomplish in your position? Please describe your top priorities and how you will measure your progress.*

The vision of the Division of Community Partnerships (Division) is to facilitate the creation of a seamless array of support for every offender who desires a successful re-integration into the community following incarceration. The Division intends to facilitate the development of strategic, collaborative partnerships with stakeholders necessary for the department to implement innovative, evidence-based programs and services that increase public safety and meets the needs of offenders returning to the community. These partnerships and collaborative efforts will allow CDCR to leverage otherwise unavailable funding and resources through untapped private/non-profit and public sector opportunities. In addition, the Division of Community Partnerships will direct efforts geared to create and nurture the connection between the institutions and the communities that host them.

In order to support successful offender reentry, the Division will provide increased programming opportunities to inmates by facilitating institutional access for volunteers and contractors who provide a wide variety of programs to the population. These programs include, but are not limited to anger management and Narcotics Anonymous/Alcoholics Anonymous. The Division also manages and facilitates the Inmate Leisure Time Activity Groups that promote educational, social, cultural and recreational interests of participating inmates. Other major activities include the provision of religious services and inmate family services.

Specifically we seek to:

- Create linkages with a broad range of entities, including the faith-based community and business sectors, to increase local community's role and responsibility in re-entry;
- Promote, encourage and facilitate community investment both inside and outside correctional facilities;
- Increase coordination of resources available to prisoners beginning re-entry efforts by improving eroded relationships with external stakeholders, facilitating a more efficient use of limited resources;

- Promote the identification, implementation and evaluation of unique and innovative re-entry programming intended to improve offender programming and re-entry outcomes;
- Expand inmate self-help programming by increasing the number of staff sponsors available and by facilitating gate clearances for visitors, screen inmate participants in the groups, and providing escorts for inmate functions.
- Improve inmate access to religious programs that are appropriately staffed and equipped;
- Increase communication and collaboration between state government agencies, increasing efficiency in programming, staff and funding of initiatives.

We plan to assess our progress by measuring our efforts in several key areas:

- Collaborative Agreements:
 - The number of new collaborative relationships established;
 - The number of formal agreements executed between institutions, communities and other stakeholders.
 - We will measure feedback from those involved in partnership with us to determine whether the partnerships are working well from their perspective.
- Level of Enhanced Resources:
 - Level of new federal and foundation grant funds awarded to CDCR and its partners;
 - Percent increase in number of grant applications submitted;
 - Level of contribution by local partners, including volunteer hours and local resources target to serve offenders.
- Program Development:
 - Number of pilot projects implemented that research shows increases the likelihood of positive outcomes for offenders in re-entry;
 - Percent increase in the number of inmate self-help “offerings” at each institution.
- Program Access and Participation:
 - Increase in offender participation in programming within institutions;
 - The level of offender participation in pre-release planning;
 - Percent increase in the number of parolees accessing programs and services.

Focus on the key areas outlined above is integral to our goal to significantly impact the effectiveness of the correctional system. The establishment of linkages and coordinating efforts across sectors (government, non-profit, academia) and levels of government

(local, state and federal agencies) are essential to fundamentally overhaul re-entry for the state's offenders.

2. *As described in the department's mission statement, your position is responsible for developing and fostering relationships with a full range of community organizations. How do you define a community partnership? Please identify specifically which community partnerships you have initiated since assuming your position. What programs resulted from these partnerships?*

A *community partnership* is a collaborative relationship involving multiple stakeholders from various levels of government (e.g. the State, counties, city governments, local school districts, etc.), segments of the economy (e.g. private, non-profit organizations; private businesses, public corporations) and community stakeholder groups (victims advocates, offender families, citizens and others) with the goal of increasing public safety and reducing victimization and recidivism.

Since July 1, 2005, the Division has been active in meeting with external stakeholders who wish to establish partnerships with the CDCR. Below are a few efforts where the Division of Community Partnerships has been instrumental in leading the department:

- The Division is coordinating with local organizations that have received federal grants to support re-entry efforts as part of the Federal Prisoner Re-entry Initiative (PRI) Demonstration Grant Program through the U.S. Departments of Labor and Justice. The four grant recipients represent the communities of Fresno, Oakland, Sacramento and San Diego. The Division has convened a CDCR working group to create support strategies for the grantees that seek to coordinate the delivery of re-entry services with the institutions. These sites expect to serve over 800 offenders annually.
- Senate Bill 618 (Chapter 603, Statutes of 2005) authorizes the CDCR to enter into agreements with up to three counties for the transfer of responsibilities and duties for the needs assessment of non-violent offenders sentenced to state prison from CDCR to local agencies. The Division is leading CDCR's efforts to implement an SB 618 collaborative partnership in San Diego. Meeting in conjunction with RJ Donovan State Prison, the San Diego District Attorney and Probation Department and other local agency representatives, the working group has met constantly since October 2005 and is planning implementation in fiscal year 2006/07. At full capacity, over 200 offenders annually are expected to participate in the San Diego County. In addition to San Diego, several other counties, including Orange County, San Mateo, and San Francisco have indicated an interest in participating in agreements as provided in SB 618.
- Community members in Santa Barbara County seek to "re-design" the re-entry system in Santa Barbara County and to improve recidivism rates. The National Council on Crime and Delinquency (NCCD), with support from the Gerbode and Roney Family Foundations, expects that the project will develop a re-entry blueprint,

defining specific roles for all stakeholders (including CDCR) and that can serve as a model for other California counties. The Division has worked with NCCD to identify issues and secure Departmental participation in the planning and identification of resources and individuals instrumental to the success of the initiative. The project hosted its kick-off event in November 2005, as well as its community assessment event in December 2005. Additional steps include a community planning meeting, a plan-approval session; community mobilization and education around the plan; and assessing progress and refining the Santa Barbara Plan.

- The Division of Community Partnerships in coordination with the CDCR Office of Research is working with Alpha for Prisons and Re-Entry to coordinate a first-of-its-kind faith-based continuum of services for offenders preparing for re-entry. It is anticipated that over 125 female offenders will be served through this pilot project. This is a unique, all-volunteer initiative that supports offenders' re-entry from pre-release to community integration. Implementation is targeted for Spring 2006.

3. *What lessons did you learn in your former positions at the Department of Alcohol and Drug Programs and the Department of Social Services that can be applied to your current job?*

A key lesson learned is the importance of collaboration and Stakeholder involvement in decision-making. As Deputy Director of the Office of Criminal Justice Collaboration, I led the successful implementation of a major voter initiative that provides drug treatment to offenders in lieu of incarceration (Proposition 36). In particular, the strategy we employed for the implementation of Proposition 36 was successful because of the coordinated efforts of treatment and criminal justice. At the core of this strategy was the creation of cross-collaborative planning and operation committees at the state and local levels. The Little Hoover Commission cited the implementation of Proposition 36 as an example of how local and state agencies can work together to systematically remove barriers to integrating services.

My previous experience with California Department of Social Services (CDSS) afforded me the opportunity to oversee some of the nation's largest human services programs. I have worked successfully with departments within the Health and Human Services Agency, representatives of county government, federal partners, legislative staff, advocates and service providers in building consensus around sensitive policy areas. My experience with local human services delivery systems provides me with and understanding of the critical roles those programs play in the successful re-entry of offenders. I have either managed or coordinated with numerous programs including:

- Child Welfare/Family Support Services/Child Protection/Domestic Violence
- Cash Assistance Programs
- Job Training & Vocational Education
- Alcohol and Other Drug Treatment Services
- Public Health and Medi-Cal
- Mental Health Services

- Adult and Post Secondary Education
- Child Support Services

As the chief of the Children's Services Branch, I administered state programs charged with protecting children at risk of abuse and neglect. I oversaw the Office of Child Abuse Prevention, which allowed me to implement innovative strategies for addressing the needs of children and families. The Office established several collaborative efforts with stakeholders around best practice and funding strategies.

As chief of the Aid to Families With Dependent Children (AFDC) Program Branch, I managed the policy administration of a \$6 billion cash assistance program. I actively represented CDSS in planning and negotiating the welfare reform effort that created the California Work Opportunity and Responsibility to Kids (CalWORKS) program in 1997. This effort to transition thousands of recipients from welfare to work was, at that time, the most dramatic change in public social services policy in sixty years. My experience with resolving issues with the Legislature, county administrators, and the federal government necessary for successful implementation of CalWORKS will help the Division as we seek to promote shared responsibility in the successful reentry of offenders.

Maintaining relationships with state and local administrators and working jointly to identify issues and craft effective solutions is essential to effecting program outcomes. Through my previous positions I have learned how to work effectively with the various associations that represent those who administer and deliver services, many of whom are critical in the support of our reentry efforts. A key to successful implementation of initiatives is the maintaining of good working relationships with associations such as the California State Association of Counties, the District Attorney's Association, California Alcohol and Drug Administrators, and the California Therapeutic Communities.

Our efforts to bring evidenced-based practices into our reentry strategies necessitate the need to do outreach to the research community. I have had experience with working with private researchers in the evaluation of the Greater Avenues for Independence Program and CalWORKS, as well as public evaluators in the evaluation of Child Welfare and Proposition 36. It is important to constantly do outreach to the research community to promote their interest in conducting new studies that inform our strategies.

Lastly, partnerships with the philanthropic community are essential to stimulating a broad range of policy study and support for change initiatives. I plan to draw upon my experience in co-sponsoring efforts with foundations in Child Welfare and Proposition 36 as we launch our community partnership initiatives.

4. *Since appointed last July, you have not only been responsible for the job to which you were appointed, but you have been Acting assistant Secretary of the Division of Adult Programs, responsible for all adult custody programs. How have you divided your time in such a large area of responsibility? Who is available to assist you in program areas*

and community partnership areas? How many employees work in the Division of Community Partnerships?

Although handling the responsibilities of Acting Chief Deputy Secretary of Adult Programs has presented challenges as I lead the Division of Community Partnerships, there have been positive impacts. My stepping into the vacant Chief Deputy Secretary position ensured that, at the highest executive levels, the interests and concerns from the Division of Community Partnerships, as well as the rest of Adult Programs were consistently represented. Serving as the Acting Chief Deputy also afforded me the opportunity to gain a fuller understanding of the adult programs and identify areas of potential collaboration between the Division of Community Partnerships and the Division of Education, Vocations and Offender Programs. Staff from throughout the Adult Programs area have stepped forward to assist the Division of Community Partnerships in meetings it programmatic charge.

In the Adult Programs area, there is a recruitment in process to fill the vacant position of Director of the Division of Education, Vocation and Offender Programs. However, there was a need to better manage the workload of the Chief Deputy Secretary and provide the Office of Correctional Education and the Office of Substance Abuse Programs the important focused leadership needed. As a result, a retired CDCR administrator was recently brought on board to temporarily lead that organization until the permanent position is filled. The other two key leadership positions in the Division of Education, Vocation and Offender Programs management structure responsible for the for day-to-day operations are the appointed chief of the Office of Correctional Education and the acting chief of the Office of Substance Abuse Programs.

There are four positions that report to the Director of the Division of Community Partnership and carry out the work of the Division. The Chief Community Liaison for Northern California has been on board since July 1, 2005 and provides administrative support in operations of the Division as well as performing liaison activities with our stakeholders. Two Community Resources Managers and one analyst responsible for oversight of religious programs, inmate family services and self-help groups were later transferred to the Division. We are moving to fill another three vacant positions recently redirected to the Division.

Additionally, program areas from throughout the Department are contributing staff to assist in the implementation of initiatives of the Division. For example, the Adult Institutions Division is providing staffing to support SB 618 implementation activities. An Associate Warden, who recently retired from RJ Donovan Prison, currently serves as the SB 618 Coordinator in San Diego County. In this capacity he serves as the Department's liaison to local government agencies, community groups and CDCR staff that participate in the area's "Re-entry Roundtable." The Division of Adult Parole Operations has also assigned its Parole District Administrator in Santa Barbara as the on-site CDCR representative for a re-entry collaborative effort in Santa Barbara County.

We are pleased to report the Division has attempted to maximize the use of other existing resources during the growth phase of Adult Programs. However, full implementation of the Division's goals requires the full-time dedication of the director and the appointment of a Chief Deputy Secretary who can provide the needed leadership to the Divisions within Adult Programs.

5. *How do you determine which programs are needed? What research on best practices guides you? How does that information affect where you choose to create partnerships?*

The Division of Community Partnerships will participate in departmental efforts directed at determining what programs are needed for adult and juvenile offenders. Information regarding programmatic needs will be gathered from various sources:

- ❑ **Organizational Plans.** Currently program needs are identified through the planning processes of the various divisions and offices of the organization, i.e., Adult Division of Parole Operations, Office of Correctional Education, and Office of Substance Abuse Programs)
- ❑ **Risk and Needs Assessments.** The Department anticipates that the implementation of standardized Risk and Needs Assessment Instruments will guide program development.
- ❑ **External Stakeholder Input.** Many times the community organizations that work with our populations or inmate families identify unmet needs and deficiencies in our system. These organizations have expressed frustration with being able to effectively communicate those needs to the department. It is our goal to improve effectiveness of the existing advisory groups, reconfiguring them as necessary. We hope to build upon the advice of our stakeholders.
- ❑ **Feedback on "Promising Practices" From Local Efforts.** We are seeing the beginning of local efforts to identify program needs that can inform our planning. An example is the Santa Barbara County "Re-engineering Re-Entry" initiative which is a professionally facilitated collaborative effort lead by local citizens, the District Attorney and County Sheriff. They have initiated activities, including community-planning meetings directed at identifying community needs and resources.

Research suggests that recidivism is not simply a correctional agency issue. My experience with social services programs supports that view. It is a community-wide, systemic issue that requires the engagement of all segments of society to achieve the successful transition of an offender into the community. Works by Dr. Joan Petersilia (2003), Faye Taxman (2002), Todd Clear (2001) and others all strongly suggest that building collaborative relationships across sectors and agencies to provide offender support prior to release is an essential step in reducing recidivism rates.¹ Additionally,

¹ See Petersilia, Joan. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford University Press; Taxman, Faye, Douglas Young, James Byrne, Alexander Holsinger, & Donald Anspach. 2002. "From Prison Safety to Public Safety: Best Practices." National Institute of Justice. Unpublished Report (IJCX0045); Clear, Todd, Dina

other states and the federal government are aggressively pursuing coordinated, collaborative efforts in re-entry and in-prison programming. The U.S. Department of Justice (DOJ), through its "Coming Home", "Re-entry Courts" and "Re-entry Partnerships Initiative" (PRI) programs, has focused attention and resources on the role of community collaboration plays in improving in-prison and re-entry programming. Finally, states such as Georgia, Idaho, Massachusetts, Michigan, New Jersey, Rhode Island, and Virginia are also participating in innovative efforts to create partnerships and improve re-entry and in-prison policy through projects sponsored by the National Governors Association, the U.S. Department of Justice and the Urban Institute (among others). All of these efforts are just now producing "best practices" research results, and we anticipate expanded evaluation research to shed additional light on the impact of these and similar programs.

This research serves as a "starting point" for CDCR to begin identifying and integrating best practices from the literature into its program development. For example, as part of the Department's effort to integrate principles of evidence-based practices into its programs, the CDCR Office of Research in partnership with Adult Programs has developed an assessment instrument to be applied to existing and proposed programs. The instrument, called the California Program Assessment Process (CPAP) is a tool for determining the extent to which offender change programs incorporate elements that research has shown to reduce offender recidivism. It is designed to assess five key areas: Program Model; Program Eligibility and Assessment; Program Structure; Staff Qualifications/Selection/Training; and Measurement and Evaluation. Currently, the instrument is being tested on a select group of offender change programs.

Criteria for funding community based projects would include, but not be limited to, the assessment of per capita costs, number of potential participants, track record of success, level of collaboration with other organizations, ability to leverage funds, etc. Similarly, when reviewing requests from local governmental entities we would assess readiness or "inert" capacity such as formal relationships, pre-existing and current efforts around reentry. We will determine the level to which the local agency has established internal and external communication through collaborative links between criminal justice, service providers, advocates, CDCR staff, as well as local health and human services agencies, etc. Additionally, we would consider demonstrated need. This criterion would focus on the level of resources available as it relates to the size of the parole population. It could also take into consideration the recidivism rate, as well as other related factors.

Lastly, we would want to measure a county's 'potential' ability to be successful. It would include, but not be limited to, the level of fiscal resources currently dedicated to a comprehensive service delivery system.

6. *What is your relationship, if any, to the juvenile justice portion of CDCR's responsibility?*

Though the Division of Community Partnerships rests organizationally within Adult Programs, we have been contacted by over 60 organizations seeking to provide services to our inmates, wards and parolees. There are many entities that target individuals between the ages of 18 and 24, without regard to jurisdictional issues. We have initiated dialogue with Juvenile Justice as to how the Division of Community Partnerships can effectively link potential partners with the key organizations within the Juvenile Division. We will continue to explore ways to integrate our knowledge and efforts with the Juvenile Justice goals and strategies where appropriate.

7. *How are you measuring the success of your programs? Your duty statement says you will establish systems and processes to evaluate the effectiveness of existing community partnerships and programs and assess the potential impact of new community-based programs on the departments operations. What were the most successful existing programs? What does it take to replicate those successful programs in other parts of the state?*

Ultimately, the Department will be measured by our ability to reduce recidivism. However, there are many intermediate measures, which allow us to determine our level of progress toward that goal. The Department is committed to measuring the effectiveness of our programming on our goal to reduce recidivism. The Department will work with the new Center for Evidence-Based Practice to identify appropriate ways to assess the impacts the various change programs we plan to implement. In addition, the CDCR Office of Research works closely with the Division of Community Partnerships to identify data in four areas: program eligibility, capacity, enrollment/participation, and exit. These measures will allow us to assess the level of demand for services, our capacity to meet that demand, the utilization of that capacity, and the degree of successful program completion. In addition, where possible, new programs and initiatives will be evaluated with program evaluation research to assess the link between program involvement and recidivism. In a few instances, these organizations are able to secure evaluation funding from other sources. Additionally, some of these programs could be part of larger ongoing evaluation efforts.

Research tells us that the most successful programs are those that provide services tied directly to offender needs. One example of this type of program is the Residential Multi Service Centers (RMSC), which provide housing, employment counseling, substance abuse treatment, and life skills training in an attempt to end long term homelessness amongst the male and female parolee population and transition them back into productive members of society. The RMSC program has 376 beds and historically has maintained a 98 percent occupancy rate. Research by CSU San Marcos showed that the 42.5 percent of the participants in the RMSC program were returned to custody within twelve months versus 54.7 percent of the comparison group. Of the program completers that rate was 15.5 percent.

In order to replicate such efforts throughout the state there are several areas that should be addressed:

- Additional resources to provide flexible, individually-tailored re-entry plans for offenders
- Improved relationships with local communities, including the provision of incentives and encouragement for them to partner with us.
- Enhanced policy support for offender re-entry that recognizes the crisis in incarceration.

8. *Please describe how you interact with parole and custody staff as you seek to initiate partnerships. Whose job is it to identify the partnerships needed? Whose job is it to initiate contact with potential partners? If you work together, who should be held accountable for progress on creating partnerships?*

The Division of Community Partnerships works very closely with the Divisions of Adult Parole Operations and Adult Institutions in initiating and maintaining partnerships. Examples include our joint cooperation and participation in the community reentry roundtables in San Diego and Santa Barbara.

Another example of the coordination between the Division of Community Partnerships and custody and parole is our budget proposal to implement the Community Partnership Managers pilot program in up to three institutions. These managers would develop and manage community resources and relationships, functions that wardens have found critical to effective programming. The Community Partnerships Manager will work as a liaison and partner with both institutions and parole to develop, allocate, coordinate, and manage all community resources within both the institutions and re-entry communities. The manager will be charged with designing and implementing new and innovative programs to benefit offenders. The partnership with local parole personnel is essential to the success of the pilot.

We have recently initiated an internal forum to better coordinate and align our re-entry efforts throughout the department. Even within the department, the successful re-entry of our offenders is a shared responsibility. The Division of Adult Parole Operations develops its assessment of programmatic needs from working with offenders on a daily basis. The Division of Community Partnerships employs a "long lens" to anticipate the inter-connectedness of those needs and assesses the capacity of local communities to meet those needs. Accordingly, the Division of Community Partnerships should be held accountable for progress in creating partnerships, our principle charge.

9. *Please identify what you consider your most effective partnerships and how you measure their effectiveness. Please provide examples, if possible from both custody and parole.*

One of our most effective partnerships is the San Diego Community Reentry Program. It incorporates both custody and parole. The planning process has been outstanding in its inclusiveness. The active role that various organizations in CDCR have played in assisting the effort has been impressive and appreciated by the county. The county is working to incorporate the best-known practices currently being used nationwide and

tailor them to San Diego County. Their preliminary plan provides for a continuum of services, starting from an offender's conviction and early assessment, and ending with services that are provided after successful reintegration into the community. The effort envisions:

- Conducting multidisciplinary screenings and assessments that focus on offenders' strengths early on, prior to sentencing.
- Providing intensive rehabilitative programming matched to the offenders' needs while in prison;
- Building offender motivation and advancing their receptiveness to change;
- Creating a new culture for Parole Agents, law enforcement, and community members to work closely together to ensure offender success; and
- Assigning both a prison case manager and a community case manager to work closely with the offender, the offender's family, the Parole Agent, and the community providers to provide the social supports and links to services needed for a successful transition to the community.

10. *What kind of special partnerships have you initiated with long-established groups? For example, CDCR staff has stated it can take up to seven months to clear an individual to work inside a prison in a program such as AA? Will you play a role in reducing barriers to working with CDCR? Do you play a role in evaluating the on-going quality of these programs?*

There are long-established groups such as Inmate Family Council that have initiated contact with the Division. We have had the opportunity to meet with many of them regarding barriers to involvement with offenders and offender programming. We plan to convene the Department's standing committees such as AA/NA and the Citizen's Advisory Committees that have been recently transferred to the Division.

The feedback from the community organization representatives who met with the Department in July 2005, was very encouraging. The level of energy, enthusiasm and commitment to forging a new relationship was evident, and is an obvious asset as we move forward to fully establish the new Division of Community Partnerships. One of the key messages from stakeholders is the desire for the Department to provide clear and consistent guidelines on access to institutions and to standardize processes allowing for customization when needed. The Division will continue to work with stakeholders around the concept of a "universal ID card".

Additionally, the Division has requested a funding increase in budget year that will enable CDCR to pay for the necessary security supervision of the volunteer sponsors. This will increase the levels and types of self help sponsor groups that are available to offenders. It should also significantly increase the numbers of offenders who can utilize these important rehabilitative programs.

The Department is committed to measuring the effectiveness of our programming on our goal to reduce recidivism. We will work with the CDCR Office of Research to identify appropriate ways to assess the impacts of these programs on our inmate and parolee populations.

11. *How are you contacting community groups to establish partnerships to help ex-offenders? Is it your job to let ex-offenders know that these programs are available to them? Are any particular efforts aimed at homeless parolees? Sex offenders? The mentally ill? If so, please describe.*

It is our goal to work with established and interested community stakeholders to promote programs for our ex-offenders, as these groups (non-profits, faith-based and community-based organizations, and local agencies) possess significant abilities in reaching ex-offenders. Our ongoing efforts in this regard include the following:

- **Providing Initial Point of Contact for Community Organizations.** For the first time, the Department has a single point of entry for organizations seeking to partner with CDCR. The Division of Community Partnerships has worked with over 60 organizations that have contacted the Department since July 2005 seeking financial and programmatic support for their efforts to serve the offender population in California. The Division provides overall communications and coordination of services to those seeking an active, participatory relationship with CDCR. Specific activities include providing requesters with contact information; facilitating contact with appropriate staff and programs; reviewing proposals; providing letters of support; and coordinating departmental participation in collaborative efforts.
- **Collaborating with Private Non-Profit Groups, Local Government and Community Stakeholders.** In July 2005, the new Department of Corrections and Rehabilitation hosted its Second Annual Future Focused Leadership Conference: The Implementation Imperative. The conference brought together high-level executives from the California correctional system and community organization representatives. The community collaborative panel presentation and dialogue, entitled, "Building a Community Partnership: Lessons from the Field" with community organization representatives and the CDCR staff focused on achieving one critical part of the department's new mission – forming partnerships with hundreds of community agencies that will support rehabilitation of juvenile and adult ex-offenders in California.

As a follow-up, we plan to convene a Statewide Community Collaborative meeting in the next few months. It is our plan to establish an ongoing structure to advise the Department in several areas:

- Development of a public education strategy to addresses community resistance to parolee reentry and encourage volunteers to assist both inside the institution and in the community.

- Development of program assessment criteria, program performance measures and a strategy for the dissemination strategies for best practices
- Expansion of the current Community Resource Directory into an interactive inventory.
- Identification of barriers to efficient certification and clearance of volunteers as well as the design of an issue resolution process where custody and safety concerns can be resolved quickly.
- Enhancement of the program planning process including advice on the improvement of needs assessment tools; service integration issues and the identification of programming priorities.
- Improvement in the level and quality of communication between the Department and stakeholder groups regarding programmatic priorities, collaborative opportunities and program expectations.

Currently, there are no active programs within the Division of Community Partnerships specifically addressing homeless parolees, sex offenders, and the mentally ill. However, there are efforts (including the Prisoner Reentry Initiative, SB 618 and the Santa Barbara 'Re-engineering Re-entry Project mentioned earlier) that are planning to address these types of offender needs as they re-enter the community. Additionally, the Division of Community Partnerships has met with and will continue to meet with the Council on Mentally Ill Offenders to identify potential areas for partnerships.

We wish to note that other Divisions within the Department are engaged in collaborative efforts as well. For example, the Division of Adult Parole Operations CDCR has created a new partnership with a the Los Angeles County Sheriff and a coalition of community-based providers in Los Angeles County to provide residential, transitional housing, economic and vocational development and placement services to 500 homeless parolees annually in the county. The Division of Community Partnerships will be working with the Division of Adult Parole Operations in the coordination of community resources as necessary for this effort and other efforts that may be targeted toward special populations.

12. *Have you tailored any programs specifically for female parolees? What role do you play, if any, in CDCR's intention to establish community beds for women?*

As noted earlier, the Division of Community Partnerships has worked with Alpha for Prisons and Re-Entry, the California Institute for Women (CIW) and CDCR's Office of Research to coordinate a first-of-its kind faith-based continuum of services for offenders preparing for re-entry. It is anticipated that over 125 female offenders will be served through this pilot project. This is a unique, all-volunteer initiative that supports offenders' re-entry from pre-release to community integration.

While DCP has no specific role in the establishment of community beds for women, the Division will be working with the Division of Adult Institutions, Associate Director of Female Institutions/Camps/CCFs, in coordination of community resources. It is our hope that we may also be of assistance in providing linkages to foundations and other organizations that are interested in supporting the initiative.

13. *One of your tasks is to set up a grants management program. Please describe this activity. How many new grants have you obtained or do you hope to obtain in the coming year?*

As part of its recent Budget Change Proposal (BCP) process, the Division of Community Partnerships requested \$4.2 million in fiscal year 2006/07 for intergovernmental and community based organization grants to promote shared responsibility in offender re-entry. The grants management program would be administered by staff in the Division of Community Partnerships, working cooperatively with staff from the Department's Office of Contract Services. Those grants offered by CDCR would be distributed utilizing inter-agency agreements or the request for proposal (RFP) process, as appropriate.

It is also the intent of the Division of Community Partnerships to engage in outreach activities to identify and compete for potential grant opportunities. Staff has identified over \$10 million in federal grant opportunities for which the Department is eligible. Working with staff from the United States Department of Justice (DOJ) and the Bureau of Justice Administration, staff is now working to coordinate with CDCR staff to determine eligibility and capacity to apply for funds consistent with the overall programmatic thrust of the Department. The Division plans to support local agencies in their efforts to secure funding from federal and private foundation sources as well.

Recently, the Division of Community Partnerships submitted a grant application to the DOJ to provide assessment and planning support for prisoners re-integrating into society. The application is in response to a call for proposals from DOJ's Prisoner Re-Entry Initiative. This companion grant supports the re-entry activities of U.S. Department of Labor (DOL) awardees. Four California communities were awarded grants in November 2005: San Diego, Fresno, Oakland and Sacramento. The amount of the award is \$450,000 over two years. Coordination and planning efforts with local DOL grantees are currently underway, with award notification expected in April or May 2005. These four DOL grantee sites are expected to serve over 800 offenders annually.

14. *How do you determine what resources your office needs to do its work effectively?*

Collaborative relationships serve as the lynchpin of a new, collaborative philosophy and business model of the Department. The Division of Community Partnerships is the principal entity within CDCR that will promote the ideal of 'shared responsibility in re-entry' proactively with local government agencies, non-profit and faith-based organizations. Within the Department there should be a single entity that can serve as the primary point of contact for external stakeholders. This reduces the frustration experienced by stakeholders as they seek to find the right organization within the department to address their requests. It also reduces the inefficiency created when

stakeholders access the organization at multiple points, creating additional workload for staff.

The following elements in the Department's Strategic Plan guide our structure and activities:

- **Strategy 6.1** – Establish internal processes, procedures and resources to support community collaborative activities throughout the department;
- **Strategy 6.2** – Establish and enhance collaborations with stakeholders to implement evidence based strategies to prevent crime, reduce recidivism and victimization;
- **Strategy 6.3** – Establish inter-governmental collaborations (e.g. with Department of Mental Health, Employment Development Department, Business, Transportation and Housing Agency) to support successful integration of parolees into our communities; and
- **Strategy 6.4** – Enhance collaborations with the academic and research communities to identify evidence-based strategies and evaluate offender program effectiveness.

Our organizational plan calls for two regional liaisons that will provide localized coordination for the state's 33 adult prisons as well as local parole operations by:

- Developing and managing local and region-level collaborative partnerships;
- Identifying and developing resources independent of the General Fund to support innovative, targeted programming unique to the challenges and opportunities of local communities; and
- Providing technical assistance to local groups seeking to improve re-entry in their area.

Additionally, our plan requires that headquarters has the capacity to coordinate the activities of all local and regional collaborative entities; to manage statewide volunteer programs, chaplaincy programs and governmental partnerships. To accomplish this, the Division proposes to establish an Office of Statewide Collaboration. There is also the need to identify and coordinate unique and innovative re-entry programming, initiate pilot projects and provide for program monitoring. The proposed Office of Program Development will handle these functions.

It is important to note that since July 2005, over 60 organizations and 14 local government agencies have expressed an interest in collaborating with CDCR on pre-release and re-entry programming. As this interest expands, our staffing needs must increase to meet the demand for collaboration. It is critical that this heightened level of interest be met with an equal level of commitment and coordination on behalf of the Department to effectively and efficiently translate these opportunities into successful, collaborative relationships.

15. *How should the Legislature measure the progress of your community partnerships division? What do you regard as appropriate yardsticks for evaluating your success?*

The Division of Community Partnerships is an integral element in the challenge of reducing criminalization and improving public safety. However, unlike police departments or social service agencies, the efforts of the Division are *instrumental* in nature, and creating environments conducive to offender re-integration is a very important element in attaining the overarching goal of improving public safety and reducing recidivism. The Division should be evaluated on its efforts to implement proven, evidence-based models of programming that are designed to support shared responsibility, collaboration and service integration.

As part of the Department's strategic management process, each program has developed "dashboards" which identify appropriate metrics by which to measure progress and ultimate success. These dashboards serve as the operational and strategic measures by which the Division's progress should be measured. The Division's dashboards are aligned with the strategic plan goals and objectives, as revised in December 2005. The dashboards will measure our performance in the following areas:

- Development of Collaborative Agreements
- Level of Enhanced Resources
- Program Development
- Program Access and Participation

The measures developed to assist in the strategic management of our operations are appropriate measures to utilize in the evaluation of our division's efforts. Many of these measures were discussed in Question #1.

RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

JOYCE E. ARREDONDO, COMMISSIONER
BOARD OF PAROLE HEARINGS, JUVENILE PAROLE

GOALS

1. *What are your short and long term goals in this position? What do you hope to accomplish?*

Short Term Goals:

Continue to be pro-active in visiting institutional and community-based programs utilized in field parole to evaluate their quality and effectiveness. Also, to actively provide feedback to the appropriate parties regarding my observations and opinions so as to influence the quality of the programs utilized.

Continue to foster communication and access to board members for policy makers, administration, line staff and wards.

Assist the Board in the full implementation of the *Valdivia companion* case law regarding juvenile offenders and parole revocation hearings.

Long Term Goals:

Give input that will help ensure that female wards have access to the same quality training and programs that the male wards do.

Actively participate on those Youth Authority Committees that could benefit from my community based background.

2. *Do you believe you've met the goals you outlined when you were heard by the Rules Committee for your first term in 2004?*

I have met three of my four short-term goals. I have been very active in visiting programs in the community and institutions. Since my confirmation hearing in 2004, I have gone on several ride-alongs with parole officers; visited multiple group homes and substance abuse treatment centers in the community; observed three different sex-offender treatment groups in the community and three in an institution setting; toured each of our institutions; participated in other treatment groups in the institution; spent a Saturday speaking with wards at an area fire camp; attended a play put on by wards at

Dewitt Nelson; and participated in a program for female parolees in which I was their keynote speaker. In addition, I have participated in training on the Interactive Journals.

As for my long-term goals I have met a third of them to date. I participated as a member on a committee which reviewed evidence-based sex-offender transitional treatment programs and on another that was part of the planning team for the CDCR reorganization.

3. *How will you evaluate your effectiveness? What specific performance measures would you suggest the Legislature use in evaluating your effectiveness?*

I evaluate my effectiveness by reviewing my goals from time-to-time to ensure that I am still working towards them. I review and evaluate my board order corrections and appeals that result from my hearing decisions to get a better guide on what I can do to improve the quality and consistency of my work. To evaluate my effectiveness, the Legislature can look at such things as my dependability, my promptness, and my preparedness in conducting the hearings for which I'm responsible. These performance measures can be validated by speaking with institution staff. My hearings are fair and impartial and this too can be determined by verbal evaluation of staff and a review of appeals of my decisions

ORGANIZATION

4. *As a member of the youth side of the BPH, are you able to offer your views to the Department of Juvenile Justice, (DJJ) on institutional issues such as programming or disciplinary practices?*

Yes. Superintendents and Parole Agent IIIs are available on most hearing days and are open to members' input. Additionally, new program issues or program enhancement issues are presented at Board meetings and members' input is disseminated by the Executive Director, when appropriate

5. *Are you able to offer your views to the youth side of your board on how the hearing process might be improved both substantively and logistically?*

Yes. There are routine discussions regarding efficiencies and strategies of the hearing process in the Board meetings.

6. *With the elimination of the Youthful Offender Board as a separate entity, have any logistical problems occurred that did not exist previously?*

Of most concern is the elimination of the Executive Officer of the Youthful Offender Board. This leaves the Board without an executive level administrator to address daily operational issues. As a result, they are being addressed at BPH headquarters executive

office without an assigned dedicated position and/or resources. This issue is being addressed by the current Board administration.

7. *The reorganization has put increased emphasis on the use of evidence based research and outcomes. Are you able to measure outcomes? If not, why not? If yes, please identify the outcome measures you use to measure success?*

Though DJJ may have well-conceived programs with good intentions that are working episodically at some places, by and large, they are not evidence based programs. Therefore, measuring outcomes is difficult at best. For example, the substance abuse treatment program at Pine Grove Fire Camp may differ from the one at Dewitt Nelson which differs from the one at Stark and so on. For consistency and fundamental fairness, the programs should all derive from the same evidence based research.

TRAINING

8. *Commissioners are required to receive 40 hours of training per year on a variety of subject related to youthful offenders. What training have you received in the last year? Is the training regularly scheduled? Are you made aware of best practices employed in other states?*

Formalized training is provided at board meetings as new subjects and issues emerge. More than 40 hours of training is provided annually, which includes the program and institution and placement visitations I discussed in question two. This year, additional training has included new procedures resulting from the CDCR reorganization; sexual harassment and ADA training; Mc George School of Law's training regarding the representation of mental health parolee's at revocation hearings; a presentation by Dr. Jennifer L. Skeem on risk assessment; and presentations by DJJ staff on new programs, such as the credit enhancement program.

DJJ PROGRAMMING

9. *How do you familiarize yourself with programming available to wards? Are you able to visit educational and treatment programs? If so, how often? Do you feel that you have an understanding of the efficacy of these programs as they are currently being implemented by DJJ staff? Please speak specifically to mental health, substance abuse and sex offender programs?*

This question was answered in part in my response for question number two. By visiting the programs and speaking with staff and wards about them, I feel I do have a good understanding, particularly the sex offender and substance abuse programs. As for mental health issues, I have visited some of the special counseling (SCP) and intense treatment

programs (ITP) provided at the institutions and have observed treatment groups. I also take advantage of the time spent in Youth Authority Administrative Committee (YAAC) and Youth Authority Board (YAB) Hearings to ask the attending psychologist questions I may have.

HEARING PREPARATION & PROCESS

10. *How much time do you spend reviewing a ward's file prior to a hearing? Do you have adequate time to prepare? Do you have any suggestions to make this process more efficient or effective?*

At present, I do not feel the amount of time spent reviewing a file prior to opening the record and having the youthful offender present has had a negative impact on the quality of the hearings conducted. However, I am always open to any suggestions to improve the process or increase efficiency. Depending on the volume of the file, I currently spend approximately ten to twenty minutes reviewing its contents. Previously, during my learning phase, it may have taken anywhere from thirty to forty-five minutes in the preparatory stage.

11. *Do you have the information you think is necessary to make a parole determination or make a decision on a disciplinary appeal? What factors do you consider when making a determination to give a date to a youthful offender or to add days to the ward's parole consideration?*

At optimal it is absolutely fine and the information needed is available. Unfortunately, the quality of reports is inconsistent, as is the investigation on some of the disciplinary actions. This is being addressed with facility superintendents to address consistency in formatting.

Factors considered in determining a parole date for a youthful offender, are a ward's acknowledgement of the commitment offense and that they understand the effects of their offense to the victim(s), as well as their comprehension and responsibility for their behavior. The programs a ward has completed related to coping skills to avoid negative behaviors in the community once paroled are additional factors in the parole consideration decision. Finally, I consider the parole placement plans, including community based support systems, family resources, and social services.

In considering disciplinary time add appeals, the Board's role is to determine whether DJJ time adds or parole consideration date extensions were justified by the facts including review of the evidence and procedural due process.

12. *Do you have the information you need regarding services that will be available to the youthful offender during parole? When do you receive this information? What role does this information play, if any, when making a determination of suitability?*

At the time I am reviewing the youthful offender's file I receive a copy of their parole plans, which includes the community resources that they will be referred to for services. When there are questions about a particular service that the institution staff can not answer, the field parole agent is contacted. This information plays a significant role in some cases and more of a moderate role in others depending on the youth. For example, if it is a mental health issue, the Board needs to ensure that the services are in place at the appropriate level as outlined by the staff psychologist and that the youth will have access to those services in order to be successful on parole. Other issues considered are the proximity to victims and other victim awareness issues. On occasion, because of one or more of these issues, an out-of-county placement program may be recommended as the Board has taken a strong stance that if we are going to release to parole it is at the appropriate level of service and supervision.

ANNUAL CASE REVIEWS

13. *The annual review process underwent legislative change in 2003. Please comment on your role in the annual review process and what, if any, changes you would make regarding your role to increase the effectiveness and efficiency of the annual case review? Do you think the reorganization has impacted this process, either directly or indirectly?*

The Board's role is as a member of a committee, not as the decision factor. There is a separate area of the board order where we make our comments. However, not being able to review the ward's progress on an annual basis and make reasonable modifications to programs or projected board dates, at times, misleads the ward and staff to false conclusions of parole readiness. The recent CDCR reorganization itself has had no impact on this process.

RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

CHARLES J. SUPPLE, COMMISSIONER
BOARD OF PAROLE HEARINGS, JUVENILE PAROLE

GOALS

1. *What are your short and long term goals in this position? What do you hope to accomplish?*

My short term goals are to a) learn more about the implementation of reforms taking place in the Juvenile Justice Division and assist with aligning practices and policies of the Board of Parole Hearings with these exciting changes; b) support the work of my colleagues and assist with training and development of new Commissioners hearing juvenile cases; c) and continue to work hard to fulfill my day-to-day responsibilities as a Commissioner.

My long term goals are to a) continuously learn from a variety of disciplines, best practices, and bodies of research that can improve my case analysis and decision making abilities; b) build relationships and leverage resources to support programming that will support restorative justice and service learning programs; and c) develop a pattern and history of decisions that have contributed to the rehabilitation of wards and prevented further victimization in the community.

2. *Do you believe you've met the goals you outlined when you were heard by the Rules Committee for your first term in 2003?*

I have largely met the goals that I outlined during my confirmation process in 2003. This has included keeping abreast and adapting to the many changes that have taken place since my appointment approximately two and a half years ago affecting both the Youthful Offender Parole Board and the California Youth Authority. This includes implementation of SB 459 and transition to the Youth Authority Board, and reorganization of YAB and CYA into the Board of Parole Hearings and Division of Juvenile Justice, respectively. I have visited with staff, observed programs both within DJJ institutions and parole settings, and consulted with experts in the field to learn as much as I could about juvenile rehabilitation programs within DJJ and the field. I have been able to build productive working relationships with my many colleagues on the Board, as well as staff and outside community groups. I believe that I have learned to give fair and objective consideration to each ward and have worked diligently to fulfill my responsibilities as a Commissioner. I have embarked on my goal of enhancing and supporting innovation in programs by securing \$50,000 in federal funding to plan an AmeriCorps program that will involve wards in "service-learning" activities toward restorative justice and developmental ends.

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3. *How will you evaluate your effectiveness? What specific performance measures would you suggest the Legislature use in evaluating your effectiveness?*

I am ever mindful of whether or not I am making a positive impact on the lives of wards and communities in my position as a Commissioner, and that I am doing my job in an appropriate and optimum manner. To the latter, I would look to assess myself professionally based on feedback garnered from critical stakeholders whom I interact with, including staff, wards, families, victims, and other hearing participants. Another source of information could be the extent and nature of grievances and appeals filed by wards regarding my behavior and decisions, or correspondence from other stakeholders. With regard to the former, I long for a means to assess the effectiveness of my parole decision making; however, I recognize that attributing cause and effect is difficult. I think that it would be useful for us to receive information allowing us to track the progress of a sample of wards whom we parole as a means to gain some understanding of factors and situations that perhaps contribute to their success or failure that could be useful in future considerations.

ORGANIZATION

4. *As a member of the youth side of the BPH, are you able to offer your views to the Department of Juvenile Justice (DJJ) on institutional issues such as programming or disciplinary practices?*

I have always found the staff of DJJ both at the institutional level and headquarters to be very solicitous and receptive of my input regarding programming and disciplinary practices. This has occurred informally at the institutions, and through interaction with DJJ staff at Commissioner Meetings, and through my participation on the DJJ reform task force.

5. *Are you able to offer your views to the youth side of your board on how the hearing process might be improved both substantively and logistically?*

Staff of the juvenile division of the Board of Parole Hearings has also been very solicitous and receptive to recommendations from myself and other Commissioners for improving the hearing process both substantively and logistically. This takes place informally through our ongoing conversations with staff and formal input and consideration at Commissioner Meetings.

6. *With the elimination of the Youthful Offender Board as a separate entity, have any logistical problems occurred that did not exist previously?*

The transition from the Youth Offender Parole Board has not presented any undue logistical hardships that I have encountered.

7. *The reorganization has put increased emphasis on the use of evidence based research and outcomes. Are you able to measure outcomes? If not, why not? If yes, please identify the outcome measures you use to measure success.*

DJJ has many good ward treatment and training programs that achieve the desired results at specific facilities. However, as they are not validated evidence based programs, it is a challenge to measure consistent outcomes. In fact, much of the success of specific programs, facility to facility, is more reliant on the zeal and passion of the instructor-staff than program content. While committed staff are key, core program elements that are supported by research results are essential. I am excited that the reforms proposed by DJJ are based on research evidence and have been implemented successfully in other juvenile rehabilitation settings.

TRAINING

8. *Commissioners are required to receive 40 hours of training per year on a variety of subject related to youthful offenders. What training have you received in the last year? Is the training regularly scheduled? Are you made aware of best practices employed in other states?*

I have participated in formal and informal training, in classroom and on-the-job settings throughout my tenure on the Commission that has imparted useful knowledge and skills in a variety of areas related to my responsibilities. Formal trainings have typically taken place directly proceeding or as a part of monthly Commissioner Meetings. Topics have included: identifying physical and learning disabilities among wards; conducting and ensuring due process in Morrissey hearings; understanding psychological, educational, and other assessment tools and analyses; conducting secondary level DDMS, and treatment and training time addition, appeal hearings pursuant to SB 459; sexual harassment; treatment and incentive programs within DJJ; and implication of court case decisions to our work.

DJJ PROGRAMMING

9. *How do you familiarize yourself with programming available to wards? Are you able to visit educational and treatment programs? If so, how often? Do you feel that you have an understanding of the efficacy of these programs as they are currently being implemented by DJJ staff? Please speak specifically to mental health, substance abuse and sex offender programs.*

The principle way of familiarizing myself with programming available to wards has been through visiting with staff and sitting in on sessions in the institutions. I have done this consistently and, oftentimes, spontaneously and have always been welcomed and accommodated by staff and wards. I have found the knowledge and familiarity of the

programs gained through these visits to be very useful in gauging a ward's progress and parole readiness, and in gaining the respect and credibility among staff and wards alike. In addition, staff have made formal program presentations at our Commissioner Meetings that have provided an opportunity for more in-depth understanding of existing programs and to give feedback and input into proposed programs. Based in particular on my participation in the DJJ reform task force, I have gained a better understanding of the efficacy of existing DJJ programs, especially mental health, substance abuse and sex offender and the of efforts to improve the practices in these areas.

HEARING PREPARATION & PROCESS

- 10. How much time do you spend reviewing a ward's file prior to a hearing? Do you have adequate time to prepare? Do you have any suggestions to make this process more efficient or effective?*

On average I spend up to 30 minutes reviewing a ward's file prior to a hearing. I believe this is enough time to review the critical documents that provide me with insight and guidance for developing a line of questioning and important areas to pursue for the hearing.

- 11. Do you have the information you think is necessary to make a parole determination or make a decision on a disciplinary appeal? What factors do you consider when making a determination to give a date to a youthful offender or to add days to the ward's parole consideration?*

With the myriad of program reports, clinical intake reports, individual treatment plans, disciplinary record, probation reports, police reports, psychological assessments, education record, victim statements, District Attorney and Public Defender responses, the presentation by staff, statements from a ward's family members or other advocates. I believe that I have ample information upon which to base a parole decision. Overall, my parole decisions on whether or not to return a ward to the community are based on public safety.

The factors that I use to determine parole readiness include a ward's ability to honestly describe the commitment offense and other criminal behaviors that ultimately brought him or her to DJJ, and the impact of their actions on victims and the community. The ward must be able to provide an understanding of what caused these behaviors and present what programs he or she has completed, and the insights, skills and tools acquired that will prevent these types of behaviors in the future. In addition, I consider the ward's DDMS record to determine if there truly has been a change of behavior as a result of the programming. Finally, I take into account the ward's parole placement and consider if it is conducive to supporting the changes and good behavior that presumably will have earned him or her parole.

With regard to the DEMS appeal hearing, the information provided by the institution is generally adequate. When it is lacking, I have utilized the option of sending the case back to the appropriate level for clarification or additional documentation. In determining whether or not to uphold a time add due to disciplinary reasons, the factors I use include whether or not there was a violation of procedural safeguards, the disposition was fair and appropriate, new evidence has surfaced that could have had an impact on the findings, or evidence was not presented or was insufficient to support the finding.

12. *Do you have the information you need regarding services that will be available to the youthful offender during parole? When do you receive this information? What role does this information play, if any, when making a determination of suitability?*

Information regarding services available to youthful offenders during parole is included in the parole placement report that is presented along with the file on the day of the hearing. This includes a description of the actual placement based on a parole agent's visit of the premises with the individual responsible for overseeing our parolee at that placement, a description of the specific program or community based service that the parolee will be required to attend, and a list of recommended community based resources that he or she may be encouraged to contact. I gauge my parole consideration in part on the presence and level of articulation of these services. At best, the transition from the institution and its programs into these community services should be seamless for the ward's matriculation back into the community. When there seems to be a major discrepancy between the needs and risks presented by a ward, and the placement and accompanying services, which present a recipe for failure, I will ask that plans be revised to address these concerns.

ANNUAL CASE REVIEWS

13. *The annual review process underwent legislative change in 2003. Please comment on your role in the annual review process and what, if any, changes you would make regarding your role to increase the effectiveness and efficiency of the annual case review? Do you think the reorganization has impacted this process, either directly or indirectly?*

The major impact of the annual review process has been to significantly diminish the role and participation of a Commissioner in these hearings. We do participate in the first and last annual reviews. This participation provides a good opportunity for us to introduce the ward to the parole hearing process and to the Board's expectations. In addition, it allows us to check in with the ward one last time prior to coming up for parole to, again, answer any questions the ward might have regarding preparation for the hearing and to provide any necessary input from the Board that is best addressed prior to the hearing date.

The downside of this revision is that the only other time the Board will see a ward is during the disciplinary or treatment and training time add appeals. In other words, the Board does not have any formal participation or check-in on a ward's progress throughout the majority of his or her incarceration, other than those settings of more negative connotations. Perhaps interim participation at some interval between the first and last annual reviews would be useful in maintaining continuity and regularity of Board input and maintain familiarity with a ward and his or her progress.

10 May 2006

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814

Dear Mr. Perata,

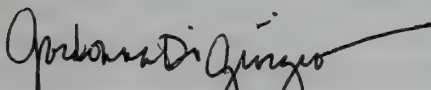
As you know, I have been appointed to the Board of Behavioral Sciences as a public appointee. As such, I feel that I can best serve the board by representing the California consumers who utilize mental health professionals. In the society we live today, I feel the necessity for the services of mental health professionals has increased and one of my goals is to see that the availability of the mental health services is available to our diverse population, with this diversity requiring individualized avenues of approach to mental health.

I would also like to see that we set consistent standards for our mental health professionals by making certain that the education, examination, licensing and enforcement policies and expectations are effectively communicated and consistently executed throughout the state.

I have been appointed to the Budget and Efficiency committee and am concerned with our lack of efficient technology in the application and examination processes. California has been a trend setter in technology and yet this department is not computer friendly as far as accepting online payments for licensing and renewals, accepting online applications for licensing and renewals, and providing the ability for all applicants to check online for their application status. I understand that the Department of Consumer Affairs is moving forward a licensing proposal that will solve this problem, and that this proposal will be for all boards and implemented as soon as possible.

I have found the members of the board and the staff to be dedicated to serving the public and the professionals in the mental health arena. They have been very generous in sharing their knowledge with me and answering all my policy and professional questions. My experience thus far has been enlightening and I am confident that my appointment as a public consumer will be of value.

Sincerely,


Gionna Di Giorgio

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the first of these is the fact that the system is not a simple one, and that the results are not always the same. The second is that the system is not a simple one, and that the results are not always the same.

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JULIA M. JOHNSON 'JUDY', LEP # 2268

.....
 Licensed Educational Psychologist
 American Board of School Neuropsychology
 Certified Sports Psychologist

Dear Senator Perata,

While attending the University of Redlands, I was selected for membership in Omicron Delta Kappa Leadership Society, largely due to my influence on campus and affiliations with a diversity of organizations and students. I realized that the gifts I possessed in leadership could be used in a therapeutic realm to empower individuals in their personal lives; and that personal transformation is the first step to any true systems level change.

With a passion for affecting positive change and growth within the school community, I graduated early with my BA in Psychology and enrolled immediately in the MA in Education with a PPS in School Counseling program at the University of Redlands. Before I became an Elementary Counselor in the Moreno Valley USD, I was employed by a private nonprofit agency and did crisis counseling at three low-income, culturally and ethnically diverse campuses (elementary, junior high, and high school). This experience involved as much social work as academic counseling and after 2 years of filing Child Abuse Reports and doing therapy through the crisis, I realized that these students were not thriving, but merely surviving. In a deliberate decision to become proactive in my therapeutic approach, I developed parenting classes and staff in-services for stress reduction, conflict management, and positive behavioral strategies. I brought this attitude of 'Primary Intervention' to my years as a school psychologist in Brea as well as Santa Maria and continued to develop and facilitate social skills groups, behavior management strategies, cross-age tutoring programs, parenting support groups, and conflict management training for campus-wide programs. I became a School Psychologist with the desire to gain more knowledge and 'tools for my tool belt'; to have complete access to the range of available programs and interventions for student, parent, and community mental health.

While in Brea, we received a grant from the Schwab Corporation to implement our collaboration model. This included our team of Resource Specialists in the General Education classrooms working side by side with the teachers and a learning laboratory of student teachers from CSU Fullerton on campus as additional instructors. When I left Brea for the Central Coast, I took the success of this collaborative approach to the University Center for Teacher Education (UCTE) at Cal Poly SLO.

Where I am currently employed at Pioneer High School, I do possess an intense passion for justice and equitable access to services in the educational system. In my diverse work settings, from the privileged upper-class neighborhoods of North Orange County to the migrant farm worker families of Santa Maria to the gang-involved areas of South Whittier – I truly believe that these communities have an inalienable right to a free and just education. I believe that education is power. I also possess a passion for justice and equitable access to services within the mental health community.

JUL 23 2006

In 2004, I received my Diplomate in School Neuropsychology, which I use mainly in my private practice as an LEP, to assist attorneys as well as private non-profit agencies and low-income families in identifying learning and mental health needs in clients, and providing the appropriate programs/resources for support. After serving as an LEP for the development of the licensing examinations, I felt honored by my LEP colleagues throughout the state to be recommended to the Governor for this appointment. I possess a spirit of humility as well as an awareness of the awesome responsibility it carries. The Mission of the BBS is to protect the well being of Californians by setting standards for mental health professionals (LEP, LCSW, MFT) through effective communication, education, examination, licensing, and enforcement. In my years of service with the school system and in the private sector, I have noted serious concerns about the integrity and accountability of private mental health professionals, and I am excited about the possibilities of assisting to create a stronger delivery system for these services. I look forward to assisting my fellow Board members in creating stronger bonds of networking for Mental Health Services within the educational system, as well as throughout the entire mental health community. I believe that my personal statement reflects a commitment to uphold the mission of the BBS, as well as work towards the effective implementation of the following STRATEGIC PLAN GOALS:

- 1.) Communicate effectively with the public and mental health professionals.
- 2.) Build an excellent organization through effective leadership and professional staff.
- 3.) Promote higher professional standards.
- 4.) Advocate for increased access to mental health services.

Respectfully Submitted,

[Signature] LEP

Ian Russ, Ph.D.**Marriage and Family Therapist****MFT #7893**16133 Ventura Blvd., Suite 1235
Encino, CA 91436

Telephone: 818-990-5740

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E-mail: ian.russ@att.net

May 16, 2006

The Honorable Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900
FAX: 916-445-0596

Dear Senator Perata:

I am honored to have been nominated to serve as a board member on the Board of Behavioral Sciences. I believe that I have a unique set of experiences and skills which will allow me to work with other board members, agencies, the legislature and the governor to protect the public and enhance the availability of culturally sensitive mental health services within California. As a licensed marriage and family therapist since 1976, I have treated individuals and families in crisis to help them improve their family relationships, thereby fortifying families and helping children to grow with the psychological and social strength to contribute maximally to society. My clinical experience has ranged from directing the first treatment program for pre-teen children who sexually abused other children, to treating trauma victims in the hospital, doing custody evaluations for the family courts, and clinical supervision of MFT interns. Working closely with Jewish Family Services, I have helped create effective programs for child abuse prevention and intervention. As a member of the faculty of the National Council of Juvenile and Family Court Judges I helped create the curriculum for training family court judges nationally and to create various training texts in child development for judges. I also train California judges on all issues of child development. In addition, teaching future therapists in the graduate program at Pacific Oaks College in Pasadena was a most enjoyable and invigorating experience. Finally, I have served as a corporate consultant to various corporations, creating more collegial working environments, planning retreats, coaching new managers, creating EAP programs and training for Title VII harassment prevention. I would now like to use these varied experiences as a family therapist, educator and business consultant to serve the people of California on the Board of Behavioral Sciences.

With the passage of Proposition 63, mental health services will expand and serve an ever-widening and culturally diverse population. The board's mission of protecting the public includes the enforcement of standards for family therapists, clinical social workers and educational psychologists. By rigorously enforcing legislated standards through licensing examination and investigating patient

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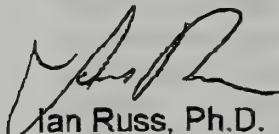
Letter to Senator Perata
Re: Nomination to the Board of Behavioral Sciences
May 16, 2006

complaints the board sets a baseline of activity. I look forward to helping the board fulfill its new mission statement by working with other government agencies, clinical training centers and the public to increase the availability of culturally attuned and linguistically adept mental health professionals. More effective communication with its various constituencies will be essential to help the board fulfill its mission.

I will campaign to better the quality of coursework and clinical experience of social work, family therapy and educational psychology students with the goal of creating a mental health workforce and delivery system that meet community needs. My graduate and undergraduate teaching experiences, along with my experience as a clinical supervisor, give me a clear understanding of the issues confronting graduate programs in mental health. I am committed to working with the various training centers, community mental health centers, professional organizations and the public in reviewing the required curriculum for MFTs to maximize each student's education so that he or she will be able to better serve culturally and linguistically diverse communities. I will bring my suggestions to the board and then help draft legislation to increase the relevance of MFT training.

Finally, I hope to use my 25 years of corporate consultation to create a more effective organization, using the best of technology to facilitate communication with the board and efficiency in serving both those we regulate and the public. Over the next few years, the board should be able to increase staff productivity by more than 10 percent by increasing the speed of processing licensing requests and the board's responses to public complaints of those we license. This is a most exciting time to serve on the Board of Behavioral Sciences, and I hope that the senate will approve my nomination and allow me the opportunity to use my skills and experience for the public good.

Very truly yours,



Ian Russ, Ph.D.

Cc: Paul Riches
Executive Director
Board of Behavioral Sciences

Joan H. Walmsley, LCSW, CAC, BCD
12 Clear Creek
Irvine, California 92620
714-669-0904

May 8, 2006

The Honorable Don Perata, President Pro Tempore
California State Senate
State Capitol, Room 420
Sacramento, California 95814

Dear Senator Perata,

I have been a Clinical Social Worker since my graduation from the University of Chicago in 1982 and licensed in the state of California since relocating here in 1988. Within two years of obtaining my license I became an Oral Examiner for the Board of Behavioral Sciences (BBS) and soon after became one of two Lead Oral Examiners in southern California. Additionally, until October 2005 I was a subject matter expert involved in writing and preparing the oral, written and clinical vignette examinations for clinical social work. I have also been a clinical supervisor and field instructor since 1993 for LCSW and MFT students, trainees, interns and associates.

I applied to become a Board Member of the Board of Behavioral Sciences because of my love and respect of mental health professionals. I have an abiding commitment to public protection and promoting the highest professional standards for mental health professionals.

This leads me to my short-term goals:

To increase the quality and quantity of clinical supervision trainees and associates are given prior to obtaining their license. Improved supervision will allow better knowledge, which in turn will allow better treatment as well as more candidates successfully completing the licensing process and thus improving the quality of care provided to consumers.

To continue the Board's involvement with the institutions that train (in the classroom and the field) candidates for licensure. These institutions play a key role in preparing students for becoming Therapists.

To increase the Board's visibility in the mental health community at large in order to help to demystify the Board's role and reduce the tension and anxiety that candidates and licensees frequently have during interactions with the BBS.

I believe that through my experience as a Licensed Therapist I can play a key role as a Board member. Throughout my career I have been committed to teaching and educating the public about the role of a Therapist; Board members are no exception. I see my role as one of helping to maintain the integrity of the profession; to promote the highest professional standards; to educate the public and to insure the protection of the people of California.

I thank you in advance for your consideration. I am honored to have been selected for this appointment and would be proud to serve the people of California.

Sincerely,


Joan H. Walmsley, LCSW

22 2006

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APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

ARCHIE J. BIGGERS, Member
Board of Parole Hearings, Adult Parole

TERRY R. FARMER, Member
Board of Parole Hearings, Adult Parole

SENATOR WES CHESBRO

CARL D. McQUILLION, Former Prisoner
TIPS Capital Alliance

MATT GRAY
TIPS (Taxpayers for Improving Public Safety)

KEITH CHANDLER
Former Life Term Prisoner

LINDA MANN BUCHALTER
Attorney for Lifer Prisoners

1 CHERYL MONTGOMERY
2 Defense Counsel for Doreen Patrick

3 KEITH WATTLEY
4 Prison Law Office

5 PHILIP S. INGLEE, Member
6 Board of Parole Hearings, Adult Parole

7 SENATOR TOM HARMAN

8 SUSAN L. FISHER, Member
9 Board of Parole Hearings, Adult Parole

10 RONALD RICO, Deputy District Attorney
11 Santa Clara County District Attorney's Office

12 RUAH WILD
13 Wife of Lifer Prisoner

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to operate as a subcommittee. Senator Bowen is out of state and will not be here today. Senator Cedillo is in route, and I think Senator Battin will be here in 45 minutes.

We have one matter that's been removed. Thomas Sawyer has been taken off calendar at the request of the administration.

We're going to take this in the order listed, but in deference to Mr. Chesbro, who's here and intending to go to Health Committee, I'd like you just to introduce Mr. Farmer, and then we'll take him in the appropriate order. We'll try to remember all these nice things that you're saying.

SENATOR CHESBRO: Thank you, Mr. President, and Members of the Rules Committee.

It gives me a great deal of pleasure to introduce someone who's been a friend of mine for probably about 30 years and who served much longer than I did in county government in Humboldt, but during my entire time as three terms as a Humboldt County Supervisor, Terry Farmer was the District Attorney.

And I can tell you, we had tough budget times, which I was just telling him, I think that was where I got my practice for my current gig in this building. During that time, Terry managed the District Attorney's department through very, very difficult challenges, through difficult polarized political times, with out-of-county protesters coming to protest the timber industry, and very contentious issues around that. He

1 maintained the professional responsibility of one of the
2 county's elected chief law enforcement officers.

3 I'm just here to testify to his dedication, his
4 integrity, and decency as a person, on top of the fact that he's
5 my friend.

6 So, it gives me a great deal of pleasure to
7 introduce him to you. With that, I'm off to Health Committee.

8 CHAIRMAN PERATA: Thank you.

9 We'll take you forthwith. You're number two, or
10 letter B.

11 MR. FARMER: Thank you.

12 CHAIRMAN PERATA: Our first appointee for the
13 Parole Board Hearings, Adult Parole, is Archie Biggers.

14 Mr. Biggers, would you come forward. So ahead,
15 sir.

16 MR. BIGGERS: Sir, my name is Archie Joe Biggers.

17 Mr. Chairman and Members of the Senate Rules
18 Committee, first let me say thank you for giving me the
19 opportunity to appear before you today.

20 Although I was born in Texas, I consider myself a
21 Californian, mainly because I spent my first nine years of my
22 life in South East Los Angeles with my grandmother until she
23 passed away.

24 Although I returned to Texas and finished high
25 school and college there, I started my military career in
26 California and retired there, here, and have been here ever
27 since.

28 I felt this was important to share with you

1 because as a Californian and as a commissioner of the Board of
2 Parole Hearings, I have two main concerns. They are public
3 safety and the rights of all of us as citizens to have the
4 opportunity to benefit from the laws that have been established
5 to ensure that our lives can be lived in a normal and productive
6 manner.

7 In accepting this opportunity to serve as a
8 commissioner, I have established a goal to ensure that all
9 parties involved in my hearings receive a fair and impartial
10 hearing. I have done everything possible to ensure that this
11 has been accomplished.

12 I joined the U.S. Marine Corps as a way of
13 serving my country. I have led men in combat and have worked
14 with young men and women in various capacities that are too
15 numerous for us to discuss today.

16 If given the opportunity to continue as a
17 commissioner, I pledge to honor all laws and work faithfully for
18 all the citizens of our great state.

19 Thank you very much.

20 CHAIRMAN PERATA: Thank you, sir.

21 Questions, Members?

22 Why did you want to do this. Not come here. I
23 mean, do the hearings? Nobody wants to come here.

24 [Laughter.]

25 MR. BIGGERS: Well, I've always been an advocate
26 of public safety, and I like working with people.

27 When I applied for a couple of positions, the
28 first one that came to mind was a youth -- coming in as a youth

1 commissioner. As of February, when I was invited to come over
2 to the adult side, I jumped at the opportunity.

3 CHAIRMAN PERATA: How were you trained for this?
4 What kind of training goes into it?

5 MR. BIGGERS: BPH has a very extensive training
6 program at this point. I was trained initially as a youth
7 commissioner, as I said earlier. And then I had to go back
8 through another grueling four weeks of training, and then was
9 sent out in the field to observe some of the other commissioners
10 that were doing hearings. And then I picked up different things
11 from each one of them.

12 CHAIRMAN PERATA: What's your typical month like?

13 MR. BIGGERS: I'm on the road probably 19 days a
14 month.

15 I receive the packages on Thursday or Friday.
16 Spend the weekend working on those, and then take off on Monday,
17 come back on a Friday.

18 CHAIRMAN PERATA: All over the state?

19 MR. BIGGERS: All over the state; yes, sir.

20 CHAIRMAN PERATA: Any rhyme or reason to where
21 you go week to week that you can detect?

22 MR. BIGGERS: Just where I'm needed.

23 CHAIRMAN PERATA: That's all I have, my pithy, in
24 depth, probing questions.

25 [Laughter.]

26 SENATOR ASHBURN: Would you like a motion?

27 CHAIRMAN PERATA: Either that, or you could say
28 something.

1 Normally Senator Battin does the motions, but
2 he's not here today.

3 SENATOR ASHBURN: I'm happy to make the motion.

4 CHAIRMAN PERATA: We have a motion to approve.

5 Anybody here in support? Opposition?

6 Seeing none, please call the roll.

7 SECRETARY WEBB: Ashburn.

8 SENATOR ASHBURN: Aye.

9 SECRETARY WEBB: Ashburn Aye. Cedillo.

10 SENATOR CEDILLO: Aye.

11 SECRETARY WEBB: Cedillo Aye. Perata.

12 CHAIRMAN PERATA: Aye.

13 SECRETARY WEBB: Perata Aye. Three to Zero.

14 CHAIRMAN PERATA: Thank you. Congratulations.

15 MR. BIGGERS: Thank you, sir.

16 CHAIRMAN PERATA: Before Mr. Farmer comes up, I
17 wanted to say a couple things, and actually I was going to say
18 this before the first nominee.

19 The whole criminal justice system, and Department
20 of Corrections in specific, in California is undergoing not only
21 a great amount of scrutiny, but we are under federal
22 receivership in a couple of areas.

23 We have gone through a reorganization, and the
24 entire area has been a matter of some concern and some interest
25 to the Senate. In fact, Budget Sub Four, chaired by Senator
26 Mike Machado, has taken an extraordinary review of what's going
27 on and how we can make better a system that clearly is in need
28 of that.

1 The confirmation process is the other area. We
2 have a budget venue; we have a legislative venue. Although the
3 issues that face Corrections right now are largely
4 administrative, arguably it's been legislative action that has
5 created the problem by incarcerating 186,000 individuals.

6 But the other venue is this Rules Committee. And
7 we have had, in looking in particular at parole, which is a
8 major part of the criminal justice system, although probably the
9 stepchild -- if you look at everything that we talk about, too
10 infrequently are we talking about parole.

11 But the confirmation process is, in fact, the
12 only process that we have available to evaluate what we're doing
13 with those serving life sentences prior to the Determinate
14 Sentencing Act. And we need to satisfy ourselves of something
15 that I brought up, I think, last year in one of the first few
16 hearings that I chaired.

17 And that is, I was concerned at the lack of
18 diversity that the parole representatives had generally. If you
19 look at the Code, there are a series of factors that must be
20 considered.

21 And so, we wrote a letter to the Governor, asking
22 him for a much more profound evaluation of the pool of
23 applicants, making a determined effort to try to do a deal with
24 economic, and racial, ethnic, and gender equality.

25 One of the things that's not in the Education
26 Code but perhaps -- in the Penal Code -- perhaps should be is
27 professional diversity. We have noticed that today and
28 subsequently, in the next couple of weeks as we roll through a

1 series of members of the Parole Board, we are seeing people who
2 almost exclusively come from one profession in life, and one
3 branch of that profession.

4 So, we are going to ask the Governor once again
5 to be sensitive and mindful of that. We are in the process of
6 creating effectively what I would view as a caste system of
7 evaluators.

8 This is not to suggest that there's anything
9 wrong with, or untoward, or inevitable about the people who are
10 being appointed, but it is to say that there is a diversity out
11 in the broader community.

12 And the point that I brought up is that we talk a
13 lot about being one nation under God, and most of the people
14 that deal with any sense of theism also believe in redemption.
15 I believe, and I'll speak only for myself, that there has to be
16 a representation in those who are being drawn upon to make these
17 very important decisions that there is a broader view simply
18 than that from professional law enforcement.

19 So, we are looking at that critically now.
20 Frankly, I was a little surprised that the bell that was rung
21 last year was not heard. More specifically, maybe this board
22 and myself personally was a little bit too ambiguous in what I
23 was looking for.

24 But I intend to meet with Timothy Simon, the
25 Appointments Secretary for the Governor, within the next couple
26 of days to restate the point. But I wanted to make it publicly
27 again.

28 I know, Senator Cedillo, you had had similar

1 concerns that you had expressed.

2 SENATOR CEDILLO: I'm happy to express them.

3 We had this conversation before. It just seems
4 to me that it's problematic, at least for me, that people whose
5 job is to -- first of all, we have a problem where our prisons
6 are overcrowded. So, on one end we have people who we have a
7 sense that they're low-level crimes, maybe don't need to be
8 there. They are there.

9 Then we have on the other end people who are
10 seniors who can barely take of themselves, not doing harm to
11 anybody else.

12 And we're not moving people out.

13 You look at who composes the board, and it's
14 invariably people whose jobs, whose life experience, whose work
15 experiences have put them in a position where they want people
16 in jail. I mean, that's what DAs do. That's what law
17 enforcement do.

18 So, If those are the people who then later on are
19 going to look at the same person and evaluate them to see
20 whether or not they should be out, the reasonable expectation is
21 that they're going to find, more often than not, whenever it's a
22 close call, that the persons are going to remain in jail.

23 And it just seems that we have could have some
24 balance.

25 I was happy to see Mr. Biggers' resume, his work
26 with inner city gangs because it tells me, well, here's a person
27 who believes in the redemptive value of people, and in the
28 capacity for people to grow beyond their circumstance, of people

1 to go from a challenging circumstance to evolve strategies to be
2 more constructive and positive in their lives and the lives of
3 their community.

4 But you're the exception. I'm glad that you're
5 here, and you are the exception, but there needs to be a greater
6 diversity. There should be an equal amount of people who are
7 DAs and public defenders. There should be an equal amount of
8 people that are in law enforcement and who should be in
9 probation. There should be a whole range of people from the
10 community who come in, who have a sense and a role in our
11 community, that sees the life process, who believe in the values
12 of redemption.

13 So, where are the pastors? Where are the
14 community leaders? Where are the people who work in drug and
15 alcohol treatment? Where are those people who can identify and
16 see that there are people whom we can bring back into the
17 community and integrate them?

18 They're not on the panel; they're not on the
19 commission.

20 It's not anything personal about any of the
21 others, but we already had this conversation. So, we're back
22 here again.

23 CHAIRMAN PERATA: Mr. Plescia, we took good care.
24 Senator Ashburn was making sure that we did a good job. I think
25 actually Senator Ashburn did a better job.

26 ASSEMBLYMAN PLESCIA: I might have heard him,
27 thank you.

28 CHAIRMAN PERATA: Thank you, Mr. Leader. That

1 was the Assembly leader, George Plescia, for those of you who
2 are not represented by him.

3 With that, Mr. Farmer, would you please come
4 forward? You may open.

5 MR. FARMER: Thank you, Senator.

6 First of all, I guess I'd like to thank Senator
7 Chesbro for those kind comments. As he indicated, we worked
8 together and have known each other for a long time in the
9 Humboldt County Courthouse. So, I appreciate his kind comments.

10 CHAIRMAN PERATA: Mr. Farmer, excuse me. Would
11 you pull that mike a little closer to you, please. Thank you.

12 MR. FARMER: Sure.

13 And I would also, I guess, like to thank the
14 Governor for the confidence that he has shown in me by this
15 appointment, and I want to thank the Committee for the
16 opportunity to come in and discuss your concerns and any
17 questions that you have.

18 I've been in this job now for about a year. I'd
19 like to think that I've learned a lot, and that I'm more
20 accomplished at it than I was at the beginning.

21 One thing that I'm finding is that the job is
22 both interesting and challenging, but also humbling, because
23 when you're called upon to consider the enormity of your
24 decisions involving individual liberty, and that's important to
25 the prisoners that are there as well as the victims and other
26 parties to the proceedings.

27 I know that you have my resume and my responses
28 to your questions. I've been advised that brevity is a virtue

1 in these proceedings, so we'll get to whatever concerns you
2 have.

3 I guess after the introductory comments, here
4 comes the district attorney, and I would ask that you feel free
5 to probe my feelings regarding issues of redemption.

6 The reality is, despite the fact that it is, as I
7 commented on in my response to the questions, that the finding
8 of suitability is oftentimes a challenging one. And we expect
9 much from inmates.

10 The reality is that the best day on this job is
11 when you do find somebody suitable, because you know that
12 someone has worked hard to attain that status.

13 So, I'll be more than happy to talk to whatever
14 extent you would like about issues of redemption.

15 With that, I'm also told that brevity is a
16 virtue, so I'll be quiet and respond to any questions that you
17 have.

18 CHAIRMAN PERATA: I have a few.

19 You've also served as the chief legal counsel for
20 a couple of years.

21 MR. FARMER: That's correct.

22 CHAIRMAN PERATA: So you'll be able to see the
23 whole picture from two different perspectives.

24 First of all, when you're looking to parole
25 someone, or at least judge the suitability for parole, how do
26 you make that determination? What are the factors that you
27 weigh most heavily?

28 MR. FARMER: It's very much an individual

1 decision, looking at the nature of the commitment offense, the
2 person's prior record, what they've done prior to their
3 incarceration particularly from their criminal history, and then
4 what they've done in the institution with respect to vocational
5 accomplishments, any therapy, gaining insight, whether or not
6 they're able to abide by the rules of the institution, and then
7 finally, what are their plans for release, and how well are they
8 prepared for that.

9 And it's a combination of all of those, and the
10 balance is really a very individual decision.

11 CHAIRMAN PERATA: Do you call routinely for a
12 psychevaluation of each, or is there one provided for each?

13 MR. FARMER: There is one routinely prepared.
14 That's certainly a big issue currently before the board relating
15 to the validity of the reports with respect to risk assessment
16 and assessments of dangerousness.

17 They're very valuable in terms of much of the
18 background information, but there seems to be a lack of
19 consensus among the profession as to their value with respect to
20 suitability or risk assessment.

21 There also is a wide range of quality coming out
22 of them, and there seems to be a lack of standards among those.

23 And finally, they're looking at the potential
24 conflicts between those that are tasked with providing therapy
25 to the inmates and also, at the same time, providing forensic
26 assessments, and whether or not that's a problem.

27 So, I think that's an issue that has been a thorn
28 in the side and needs to be resolved, frankly.

1 CHAIRMAN PERATA: How would that happen, given
2 the way you guys are structured? Who initiates that?

3 MR. FARMER: It has been discussed among the
4 Rutherford Task Force, which is a task force set up to address
5 problems of the backlog. And out of that, there have been
6 discussions both among commissioners and within the executive
7 office and the institution of addressing that issue.

8 So, it's a work in progress. It's happening
9 now. I think it's important that the commission take an active
10 role in that process and ensure that it moves forward.

11 CHAIRMAN PERATA: Has that ever been a subject of
12 the Little Hoover Commission's oversight, do you recall?

13 MR. FARMER: I don't know. I understand that it
14 has.

15 CHAIRMAN PERATA: Is there such a thing as you
16 being too old for a psych evaluation?

17 MR. FARMER: No, not to my knowledge.

18 CHAIRMAN PERATA: And whatever model that they're
19 using, even if it lacks uniformity, which is, I agree, of some
20 concern, how old is this model? There must be some kind of a
21 protocol that's used.

22 MR. FARMER: There's a standard way in which
23 items are addressed. How old it is, I don't know. They're
24 addressed in different ways by different individual
25 psychologists.

26 CHAIRMAN PERATA: I noticed in reviewing some of
27 the material that there seems to be a trend now towards
28 multi-year denials that go away from the single year. And, you

1 know, if it's being done because of workload, that's one factor.

2 But I always think that if the idea is to try to
3 get people teed up and ready, it's better to have them
4 frequently coming before an evaluator than saying it's going to
5 be three or four years.

6 Is that trend because there's so many cases that
7 you're overbooked, or why do you think that is?

8 MR. FARMER: First of all, I think a multi-year
9 denial solely for the purposes of reducing the backlog is highly
10 improper. That shouldn't happen.

11 On the other hand, I think it is appropriate that
12 the length of the denial somehow relate to the work that you see
13 a person has to do, and the length of time you would expect
14 that, for example, they would remain disciplinary free, that
15 they've participated in their vocation.

16 And so, if you're dangling out a one-year denial
17 to somebody that you know is not going to be suitable for an
18 extended period of time, that's really not fair to any of the
19 participants, including the inmate.

20 So, I think certainly what I try and do is make
21 the length of the denial an accurate reflection of at least how
22 long I think a person would be ready. To my mind, a person
23 that gets a one-year denial is somebody you're telling, you're
24 close. Do a little fine-tuning, and I would expect that you
25 would be granted a date in a year.

26 CHAIRMAN PERATA: I noticed that you said that
27 the hardest decision that you've had to make, I think in life,
28 was the decision you made regarding the parole of James Tramel,

1 Reverend Tramel?

2 MR. FARMER: I think we talked about that.

3 CHAIRMAN PERATA: That's one, of all the parolees
4 that you've dealt, that's one that I happen to know of.

5 MR. FARMER: Briefly stated, Reverend Tramel's
6 done some amazing things and work in the community. He's, from
7 that measure, demonstrated himself to be well suitable.

8 One of the things we're very much into is
9 insight, to what extent does a person understand the
10 circumstances that got him there, and how does he avoid that.

11 In discussing the life crime with Reverend
12 Tramel, and I'm not stating anything that wasn't a part of the
13 record, his role in that crime was very much as the ring leader.
14 Although he was not the person who stabbed the individual, he
15 was the one that got it going, and he admitted that himself
16 after some long discussions.

17 And he, in the hearing, wanted to continue along
18 that line, that the stabbing was a surprise. So, we talked at
19 some length about that, and that's what was disturbing about it.
20 But again, you look at that, what I viewed as a negative factor,
21 and then all the positive factors that he illustrated, when it
22 comes to then ultimately making a decision, it was determined
23 that my concerns about that were greatly outweighed by the
24 favorable factors, and thus I found him suitable.

25 CHAIRMAN PERATA: What made it so hard?

26 MR. FARMER: You want to go away with a feeling
27 and an understanding that a person really understands what got
28 him there and what he might do to avoid that in the future.

1 When you back away from what you did, or seem to, that just
2 makes you want to talk about it.

3 CHAIRMAN PERATA: At the time that you were
4 wearing your other hat as the chief legal counsel, did you make
5 recommendations for any changes, and did they ever come to pass?
6 Do you recall?

7 MR. FARMER: I'm sure I did. I was really,
8 first of all, in the process of learning how the board operated,
9 then responding to the situations that arose.

10 I'm trying to think what recommendations would I
11 have made. I know that I've been criticized for recommending
12 multi-year denials. That was not one of them, frankly.

13 I guess the answer is yes. If you're going to
14 next ask, what were they, I'd have to think a bit.

15 CHAIRMAN PERATA: The next thing is very
16 specific. I must confess that this is as a result of good staff
17 work, not something that I read in the paper.

18 I have this question for everybody, so there will
19 be a quiz.

20 Doreen Patrick was an inmate who got a split
21 decision for parole. One member of the panel voted for parole,
22 and one member voted for a one-year denial.

23 Your full board breaks the tie, but the board
24 gave her not parole, not one year, but four years.

25 I know, Mr. Biggers, you weren't on the board at
26 the time, so put your pencil away.

27 I find that I'm interested, and I think this is
28 why it was called to our attention.

1 Why would you, when you're not the primary
2 hearing officer but effectively the appellate office, evaluator,
3 why would you make it four times as long as the recommendation,
4 at the worst, of the primary hearing panel?

5 MR. FARMER: On reflection, I think that was a
6 bad decision that we made. I was part of that, the decision to
7 do four years.

8 And so, when it came back before us, we changed
9 it. I think that she needed to be able to come back before the
10 panel, and within a year, and that's what we set, and make her
11 case again.

12 CHAIRMAN PERATA: But initially you ruled four
13 years?

14 MR. FARMER: Yes.

15 CHAIRMAN PERATA: Why?

16 MR. FARMER: It seemed like a good idea at the
17 time. One of those that you look back on and you go, I'm not
18 sure it was such a good idea. And that's why we changed our
19 mind, frankly.

20 CHAIRMAN PERATA: As a former prosecutor, as a
21 lawyer, just what is your considered opinion about that? The
22 factual basis is one thing, but do you routinely, or are
23 routinely now decisions effectively not overturned, but you're
24 elongating sentences again. A decision is made by the primary
25 hearing panel, and then is it a de novo review that you have?

26 MR. FARMER: You're speaking about the en banc
27 process?

28 CHAIRMAN PERATA: Yes.

1 MR. FARMER: Yes, it is a de novo.

2 I think the argument can be made supporting the
3 extensive denial, but the argument against it is so much better.

4 So, I think in those situations, because the
5 inmate is not in front of you, the denial should be such that
6 they have the opportunity to again come back before the panel in
7 a short period of time.

8 CHAIRMAN PERATA: As a person, once again, in
9 many areas of my life not knowing the first thing about this, on
10 the face of it, that's disturbing to me. I don't understand all
11 the intricate ways in which this operates, but it does go to the
12 heart of the concern that I have as Member of this Rules
13 Committee. That is, we have to be the one to look over your
14 shoulders and make sure that the methods by which we operate in
15 parole are sustainable in a manner that has integrity and a
16 sense of justice.

17 This is not an accusation, sir, but it's
18 something that does concern me, and that's the reason I brought
19 it up.

20 Has this changed?

21 MR. FARMER: I think my only response to that
22 would be that the board did recognize that what we had done was
23 not the correct thing to do, and that's why we changed it.

24 I don't think the decision that we originally
25 made, frankly, can be justified. So, we relooked at it, and not
26 just in response to that criticism, but you know, recognizing
27 that criticism, and then discussing it among ourselves. You go,
28 aw, this is not the fairest thing.

1 CHAIRMAN PERATA: This was done how long after
2 the fact? Was there a Paul-ian like conversion?

3 MR. FARMER: It came up -- I forget exactly what
4 the timeframe.

5 CHAIRMAN PERATA: It wasn't an hour after? This
6 was some period of time?

7 MR. FARMER: Oh, yeah, two to three months.

8 CHAIRMAN PERATA: Any questions by other Members?

9 SENATOR ASHBURN: I do.

10 CHAIRMAN PERATA: Senator Ashburn.

11 SENATOR ASHBURN: Mr. President, thank you.

12 I want to go back to the case that you were just
13 talking about so that I understand that a split decision, then
14 going subsequently to the full board and additional time being
15 added before the next opportunity for the parole to be reviewed.

16 Would that have come to the board as a
17 recommendation from your professional staff?

18 MR. FARMER: I don't think it did in that case,
19 as I recall.

20 SENATOR ASHBURN: So, who would have said, well
21 the hearing officer said one year for this particular person to
22 be reviewed, and the other commissioner hearing the case, having
23 said that, you know, I'm in favor of granting it, how would
24 suddenly four years have emerged?

25 MR. FARMER: My recollection, and it may be
26 faulty because I wasn't aware that that was a transcript I
27 should have reviewed, that legal counsel was available. And the
28 issue was raised as to whether or not it could be done.

1 And then the discussion was whether it was
2 appropriate to do it. And so, there was advice that yes, it
3 could be done.

4 As I indicated to Senator Perata, I think the
5 argument can be made that it was legally defensible. That's not
6 the same thing as saying that it was appropriate.

7 SENATOR ASHBURN: I'm not sure I'm following your
8 explanation.

9 I'm to the point where someone would have said,
10 yes, it could technically be done, four years before the next
11 review, but who would have suggested it?

12 MR. FARMER: I don't recall.

13 SENATOR ASHBURN: I think it's an important
14 question because it goes to the decision making process and the
15 role that staff may play in influencing or otherwise advising
16 either individual commissioners as they carry out their hearings
17 or the work of the full board.

18 I mean, it's troublesome to me because I've not
19 heard here an explanation as to how that would have occurred.

20 MR. FARMER: I think, and again, I'm trying to
21 recall what occurred, but ultimately it would been the decision
22 of the commissioners not at the urging of staff.

23 SENATOR ASHBURN: So the commissioners met, and
24 they said, "Well, my gosh, one commissioner said parole the
25 person, and the other commissioner said let's review it in one
26 year, but ah, let's just throw four years on there."

27 MR. FARMER: I --

28 SENATOR ASHBURN: Well, tell me that isn't so.

1 MR. FARMER: Obviously that was the result. But
2 reasons would have been expressed as to why that was
3 appropriate. What those reasons are --

4 SENATOR ASHBURN: Then who would have expressed
5 that?

6 MR. FARMER: The commissioners.

7 SENATOR ASHBURN: A commissioner.

8 MR. FARMER: Or the body --

9 SENATOR ASHBURN: But not a commissioner that
10 actually heard the case.

11 MR. FARMER: It would have been made based upon a
12 review of the transcript and the record, all of which are
13 available.

14 SENATOR ASHBURN: Would you do something for me
15 and get that transcript and come back? I'd like to see exactly
16 what did take place at that hearing.

17 MR. FARMER: There would not be a transcript of
18 the en banc hearing. There would be a transcript of the prior
19 hearing of suitability.

20 SENATOR ASHBURN: That's of little value then.

21 MR. FARMER: That's true.

22 SENATOR ASHBURN: On the issue of psychiatric
23 evaluations, in answer to Senator Perata's question, you
24 answered it two ways. First you said they're very valuable.
25 Then you said they are of questionable value. And then you said
26 that they are inconsistent. And then you said there's a lack of
27 standards.

28 Now, you said all of those things within a span

1 of 60 seconds.

2 I have a transcript of one of your cases. And
3 the specific request made to you was to defer the hearing, to
4 postpone it, because the psychiatric report in the case was five
5 years old. And you denied that.

6 How old should a psychiatric report be to be
7 valid?

8 MR. FARMER: In any case you would -- well, how
9 old to be valid, it's an individual decision. I mean, there is
10 no definite timeline because --

11 SENATOR ASHBURN: Do you think the board should
12 operate with individual decision making, or should there be
13 standards?

14 MR. FARMER: There are standards, but each case
15 is an individual --

16 SENATOR ASHBURN: There isn't a standard for how
17 old. Are you saying that there is a standard, but no standard
18 was applied?

19 MR. FARMER: The standard is, is a new
20 psychological report necessary for the decision before you.

21 SENATOR ASHBURN: How did you know that a
22 five-year-old-plus year psychiatric evaluation in this
23 particular case was valid?

24 MR. FARMER: In light of the other factors
25 considered in the case, the recentcy of the psychological report
26 was not significant.

27 SENATOR ASHBURN: Has this ever been discussed by
28 the commissioners, the psychiatric reports, the updating of

1 those reports, what would be a good standard for the contents,
2 the criteria to be contained within the evaluations?

3 You know, how difficult would it be to have a
4 group of psychiatrists, psychiatric experts to give advice to
5 your board in terms of, well, three years for an evaluation is
6 okay, but six, you're pushing the limits of what might be valid?

7 Has that ever been discussed?

8 MR. FARMER: It's actively under discussion at
9 the present time.

10 SENATOR ASHBURN: Has it ever been resolved?

11 MR. FARMER: It has not, no.

12 SENATOR ASHBURN: How can you proceed without an
13 issue as basic as that being resolved?

14 MR. FARMER: It is -- I agree with you that it is
15 a basic issue.

16 SENATOR ASHBURN: Then why isn't it resolved?
17 You're a commissioner, and how long have you been there? You
18 were the legal counsel to the commission, and you sat there as
19 legal counsel and found that was an acceptable procedure?

20 MR. FARMER: I did not.

21 SENATOR ASHBURN: Did you ever object?

22 MR. FARMER: I did.

23 SENATOR ASHBURN: Is there any documentation of
24 your objection?

25 MR. FARMER: I doubt it.

26 SENATOR ASHBURN: Then I don't think it occurred.

27 MR. FARMER: I'm sorry.

28 SENATOR ASHBURN: I mean, if you have no

1 documentation that you ever raised an objection over something
2 that significant, and you're saying, "Trust me that I did it," I
3 don't have any reason to disbelieve you, but this is a very
4 serious matter, it seems to me.

5 What is the criteria that is followed by the
6 members of the parole board in making their decisions? Those
7 are important, and they ought to be defined, and they ought to
8 be able to be understood by anyone. There ought to be
9 standards.

10 Now, we had this conversation, Mr. President,
11 over psychiatric reports.

12 You raised another issue over the diversity of
13 the panel, diversity not just in the obvious factors, but also
14 in the background and experience of the individuals who serve on
15 this board.

16 But we had a very explicit from this Committee
17 discussion of psychiatric reports, and the updating of those
18 reports, and having them be timely and meaningful.

19 And to the best of what I can discern from this
20 hearing, nothing has happened.

21 MR. FARMER: I invite your discussion with other
22 persons coming up here, but I agree with you. I agree with you
23 that it's an issue that needs to be resolved.

24 SENATOR ASHBURN: I mean, you were counsel to
25 this board, and you said you objected. And I would like to see
26 a piece of paper where you ever communicated to the commission
27 that you had concerns about this.

28 MR. FARMER: My concerns were not legal concerns,

1 but they are concerns about process.

2 CHAIRMAN PERATA: Senator Battin.

3 SENATOR BATTIN: Thank you, Mr. Chairman.

4 I had an opportunity to meet with the nominees
5 yesterday. And we brought this topic up about the psych evals.
6 And I asked everyone what they thought their use was.

7 And the overall consensus that I got was, it is
8 part of a tool that you have to take and understand the value of
9 it, and you have to look at the facts behind it.

10 Part of it, Senator Ashburn, is you have to
11 understand who wrote it. And you have to understand if that
12 person tends to be sympathetic to one side or another usually.

13 And I equated it to like an analysis that we get
14 on a bill. One of the things that I'll do if I'm struggling
15 with it is, I'll flip through and see who wrote it, because I
16 have a history enough to know that that person is, you know, is
17 more conservative or more liberal when we're talking about a
18 bill. And more, when you're dealing with a psych eval, more
19 sympathetic to release than not.

20 Sometimes the psych evals are sloppy. Sometimes
21 they're meticulous.

22 One of the things I think that was brought up
23 yesterday was that the board is in the process of wanting to get
24 more of a team of moving through the institutions, doing the
25 psych evals.

26 One of the other things that they had was, that
27 they spend a lot of time with these people, and that sometimes
28 they become more friendly with them, and that might color their

1 judgment, or it might make their job more difficult because they
2 have to deal with these people on a day-to-day basis. And if
3 they come out critical, then they've also got to deal with them
4 in the future.

5 The board members, all of them, all of them said
6 we have to do that. They understood that. And they all look at
7 the psych evals with that subjective eye.

8 As a proud University of Oregon graduate with a
9 degree in psychology --

10 CHAIRMAN PERATA: You're kidding.

11 SENATOR BATTIN: I'm not kidding. I'm telling
12 you, it is an incredibly subjective field.

13 SENATOR ASHBURN: I rest my case.

14 [Laughter.]

15 SENATOR BATTIN: It is an incredibly subjective
16 field. And you can't -- you're never going to get a perfect
17 one. Just not going to, because whoever writes it, they color
18 it. And you can get their best, most attempted detached view,
19 and it's still going to be factored by their philosophical
20 belief, their emotional attachment to the inmate, their belief
21 on the criminal justice system, their work ethic. It's just
22 going to be a document that can only and never be beyond a
23 tool.

24 And it is clear to me from all the board members
25 that that's the way they see it, and that's the way they use it.
26 And that they have a whole other list of things that they use to
27 make sure that they come to the right decision.

28 So, I think, Mr. Farmer, I just caught the last

1 part and I apologize for being late. I was down in the horse
2 shoe.

3 CHAIRMAN PERATA: Name dropper.

4 SENATOR BATTIN: I don't want to get caught up in
5 this debate because the psych evals is not something that we
6 should be judging Mr. Farmer by. We should be judging by his
7 ability to discern and come to the right conclusion.

8 I had the very interesting time to spend time and
9 watching him in action at a parole hearing. I went down and saw
10 it, to see what they were about. And saw Mr. Farmer, and I have
11 no qualms whatsoever in supporting his nomination. I think he
12 did a fine job there, and I think he's going to do a fine job on
13 the parole board.

14 CHAIRMAN PERATA: Thank you.

15 Any further questions?

16 If not, anybody here in support of the nominee?
17 In opposition? Come forward, please.

18 MR. McQUILLION: Senator, it's a pleasure,
19 Committee. Thank you.

20 CHAIRMAN PERATA: May we have your name for the
21 record, please, sir?

22 MR. McQUILLION: My name is Carl McQuillion. My
23 legs are too long for this table, sorry.

24 I run a paralegal service in Napa, California. I
25 testified before this Committee last March in opposition to
26 Susan Fisher and Margarita Perez.

27 CHAIRMAN PERATA: Your legs were too long then,
28 too. I remember.

1 MR. McQUILLION: Yes, they were then, too. But
2 I'm going to give it another try.

3 I don't know Mr. Farmer personally, as I don't
4 know any of the rest of the commissioners. However, my sole job
5 out here -- I was an ex-con -- my sole job out here is
6 litigation for lifer parole. I work for a number of law firms
7 up and down California, doing research and brief writing.

8 I am extremely familiar with the transcripts,
9 psych evaluations, life prisoner evaluations, et cetera.
10 Anything you want to know about them, I believe that I can
11 answer your questions sufficiently.

12 I was concerned about Mr. Farmer. I was
13 listening to him talk. I made couple of notes.

14 And as you pointed out, Senator Ashburn, as you
15 mentioned that as well, he's been chief legal counsel for the
16 board for sometime. And as a person who has gotten extremely
17 acquainted with legal procedure and parole law, it occurs to me
18 that, how does one be a chief counsel for the Board of Prison
19 Terms and not step up to the task of explaining to the board
20 that 99 percent denials of parole is clearly inconsistent with
21 the controlling statute.

22 And he mentioned -- ya'll talked about the
23 multi-year denials. And last year, that was a big concern as
24 well. And as I testified last year, the Penal Code 3041.5,
25 subdivision (b)(2) is very criteria-specific. It doesn't allow
26 the board to give out multi-year denials as a means to manage
27 their backlog, which backlog is caused by their refusal to grant
28 paroles.

1 As soon as that hearing last year was over with,
2 and these two commissioners were confirmed, we seen a huge
3 increase in the multi-year denials after I just got through
4 saying it's illegal to use it for that manner. And Mr. Farmer
5 should have pointed that out to them. Obviously he didn't,
6 because they continue to use these multi-year denials as we
7 speak.

8 We're talking about what reasons they give.
9 When they give out these multi-year denials, they give out these
10 pro forma boilerplate reasons from their regulations that sound
11 like they're doing a good job, but the outcome is already
12 predetermined. This is what they intend to do; this is what
13 they want to do; this is what they do.

14 And they give these disingenuous and completely
15 inaccurate and unsupported reasons for these multi-year denials
16 so that they don't have to come out and tell you out front,
17 "Well, we're giving a multi-year denial out because we've got
18 this backlog because we don't parole these people, and we need
19 to manage our caseloads somehow." That's the bottom line of
20 what they're doing.

21 Mr. Farmer could explain that to them because he
22 is a lawyer, and he is a legal counsel, and he did not step up
23 to that task.

24 On this matter of de novo review that he was
25 talking about, Section 3041 of the board's regulations speak to
26 the Decision Review Unit's review of the board decision. First
27 of all, I'd like to say that this DRU Unit never reviews a
28 denial of parole, but they always review the grants of parole.

1 That is also a regulation that is
2 criteria-specific. But more often than not, we are seeing that
3 these -- this DRU Unit is disapproving these grants. And we
4 keep asking ourselves, and those of us in this business keep
5 asking ourselves, "What's going on here?"

6 Well, we know what's going on. They're running
7 their no parole policy that the Supreme Court says they don't
8 have, except that the Federal District Court in the Eastern
9 District says yeah, they do.

10 So, they manipulate the regulations and the
11 statute in order to carry out their agenda. And we just, you
12 know, we just keep being in awe of why the counsel and the
13 Attorney General is allowing this.

14 The Attorney General is their lawyer in court,
15 not Mr. Farmer. When we take these parole decisions to
16 litigation and bring them into court, Mr. Farmer doesn't go
17 there and represent the board, the Attorney General does. And
18 you'd think that somewhere along the line, the people that are
19 in authority and law enforcement would step up and understand
20 what the Constitution means. But obviously, they don't seem to
21 understand that either because they are simply the defenders of
22 whatever the board wants to do, and what the Governor wants to
23 do.

24 We are here to say we oppose. I certainly
25 oppose. And I can speak for 27,000 other lifers who've had the
26 experience, directly or indirectly, with Mr. Farmer would say,
27 "Please, don't vote for him."

28 Thank you.

1 CHAIRMAN PERATA: Thank you.

2 SENATOR BATTIN: Are you saying that Mr. Farmer
3 has a 99 percent revocation --

4 MR. McQUILLION: I'm not talking about Mr. Farmer
5 in particular. I'm saying that the Board of Prison Terms has
6 been running about a 99 percent denial for the last 16 years,
7 and he is a part of that. He has always been a part of that.

8 SENATOR BATTIN: Mr. Farmer had 382 hearings, 312
9 denials, 18 grants. It's 81.7 percent of the time that he has
10 granted, just for the record.

11 MR. McQUILLION: Thank you.

12 CHAIRMAN PERATA: Next.

13 MR. GRAY: Thank you, Mr. Chair and Members.
14 Matt Gray behalf of Taxpayers for Improving Public Safety in
15 opposition to Mr. Farmer's confirmation.

16 I'll say as a former staff member to the
17 Legislature, I'm troubled when any decision maker arrives at a
18 hearing and openly declares that they're ready to make a
19 decision when they haven't even heard all of the facts. It's
20 troubling for me. I don't appreciate it, but I suppose that's
21 their right.

22 I had the opportunity to personally observe
23 Mr. Farmer in action at a hearing where there was a
24 five-year-old psych report. This was just a few months
25 following my opposition to Margarita Perez's confirmation. She
26 decided to then preside, and imagine how fun it is for me to sit
27 here in open hearing and discuss my dirty laundry. But it's a
28 matter of public interest, and I think that the people should

1 know.

2 She decided to personally preside over the
3 hearing of my father, who is a termed life inmate. Apparently
4 didn't see the inappropriateness of that, but she was removed at
5 the last minute, and then Mr. Farmer decided to preside over
6 it. And in my estimation, my opinion, and my observations, his
7 open bias against me was evident from the get-go.

8 I requested at that hearing, prior to that
9 hearing in writing, and both before the hearing began that day,
10 since I am a victim of the crime, and I am allowed to speak,
11 that I be allowed to speak last. It didn't interfere with the
12 procedure or the process or the outcome of the hearing. And for
13 no other reason than he could, he denied me. Okay, in deference
14 to his decision, I began my testimony.

15 He then interrupted my victim's testimony to
16 challenge me on what I was saying. It had no relevance to the
17 outcome of my testimony, and there was no reason. He didn't
18 gain any insight into doing that. There was no purpose for
19 doing that. That was number two.

20 He proceeded with a five-year-old psych report,
21 as I previously mentioned. Didn't have an issue with the psych
22 report or any of the information that was contained in it. He
23 accepted it; said, "Fine."

24 And yet, the reasons that he used to deny the
25 inmate, my father, were all issues relevant to a current psych
26 report.

27 I provided the information, the transcript, to
28 all of your offices. Many of you were kind enough to meet with

1 me.

2 And the issue I have is, Mr. Farmer seems to feel
3 that he knows more than the psychologist, even though he doesn't
4 have any problem with the psych report. It is the only piece of
5 forensic evidence that they have, the only tool that they have
6 to determine whether or not this person is, in a professional's
7 opinion, suitable or not a risk to public safety.

8 Finally, the bias was evident when a victim's
9 next of kin, who was not scheduled or approved to speak,
10 interrupted not once, not twice, but three times to use
11 profanity and vulgarity and make declarations which were simply
12 not supported by any fact.

13 And at the third time, when I looked up at
14 Mr. Farmer, do you know what he was doing? He had a big grin on
15 his face, and he was looking at the man who was making the
16 declarations, and he was nodding his head yes. So, how was that
17 a fair hearing? I'm offended by that.

18 This building operates in such a way where we are
19 often collaborative on issues. We do so because it shows great
20 deference to the dignity that we respect and observe in each
21 other. Even though we differ on professional opinions and
22 issues, at the end of the day we still, you know, can come
23 together and have a good time and understand that we simply see
24 differently on some issues.

25 For him to take his personal bias against me,
26 which I think was evident in that hearing, based upon my
27 professional representation here, and take that and shove into
28 my face in a personal setting, I take great offense to that. It

1 was an attack against me.

2 I ask for your No vote, and I ask that you block
3 his confirmation.

4 CHAIRMAN PERATA: Thank you.

5 Yes, sir.

6 MR. CHANDLER: Hello. My name's Keith Chandler.
7 Like Mr. McQuillion who spoke a few minutes ago, I'm a former
8 life term prisoner. I served 21 years in the state prison
9 system, the last nine of which illegally confined due to board
10 policies that rescinded dozens and dozens of dates in the early
11 '90s as the No Parole policy started.

12 The law firm that I currently work for is the law
13 firm that handled Mr. Gray's father's case. I know that each
14 Member of the Committee has been provided a transcript. I
15 think that transcript alone shows why Mr. Farmer should not be
16 confirmed to the board.

17 I find it intellectually indefensible that the
18 Legislature has set up a board to determine parole, the sole
19 question being the inmate's current danger to the community.
20 And anybody who purports to serve on that board could proceed
21 with a five-year-old psych report. The only question before
22 them is current dangerousness. How do you figure that out with
23 a five-year-old psych report?

24 I agree with Mr. Farmer and Mr. Battin, that the
25 psych reports do have inconsistencies. I've seen them myself.
26 I'll be the first to admit that. I think that there are people
27 who bring their biases to the writing of the reports.

28 That's true, but it's still the best and the only

1 tool the board has to determine current dangerousness. To
2 proceed with a five-year-old psych report was irresponsible
3 unless you'd already made the decision to deny parole in your
4 own mind. It's the only way that you could proceed.

5 And then at the end of the hearing, as the
6 transcript clearly shows, almost everything stated to deny
7 parole was directly relevant to psychiatric issues: insight,
8 understanding, need for further therapy. Those are all things
9 directed right to the psychs.

10 And I believe that the hearing decision was
11 predetermined. I believe the record clearly shows that, if you
12 take the time to read the transcript.

13 I can only say that, you know, as a former
14 prisoner, I can't believe the board would want to determine
15 parole suitability for any inmate without an up-to-date,
16 accurate psych report. And the policy of this board for
17 numerous years, some of which under Mr. Farmer's direct control
18 as chief counsel, has been to proceed with these old reports.

19 And I think it's one of the reasons why you see
20 court after court ruling against the board. And I think it's in
21 some degree why we've had a federal court now rule there's been
22 in existence in California for some time a No Parole policy at
23 the board.

24 If the hearing decisions aren't predetermined,
25 why are you depriving yourself of the most accurate information?

26 In any event, I would think the record's pretty
27 clear as to Mr. Farmer that anyone who proceeds in that manner,
28 and then deny the parole for psychiatric factors, had

1 predetermined the outcome of the decision.

2 I strongly oppose Mr. Farmer's nomination. Thank
3 you.

4 CHAIRMAN PERATA: Thank you.

5 Yes, ma'am.

6 MS. BUCHALTER: Senators, I have a letter.

7 CHAIRMAN PERATA: You can turn around and give it
8 to the sergeant, then come on up and take a seat.

9 MS. BUCHALTER: My name is Linda Buchalter. I
10 am a lawyer. And for over 10 years, I have represented hundreds
11 and hundreds of inmates at their suitability for parole
12 hearings.

13 I drove 400 miles to attend this hearing, with a
14 round trip of 800 hundred miles by the time I get back home,
15 because I think these hearings today in this particular bank of
16 potential commissioners, who are commissioners now, is very,
17 very important.

18 As far as the psych report, goes I disagree that
19 the inmates are friends or friendly with psychiatrists. My
20 clients basically see the psychologist or psychiatrist for about
21 an hour, maybe two hours. And they don't see them again until
22 the next psych report, and it could even be a different
23 psychologist or psychiatrist.

24 I think the board does not like it when the
25 psychologist gives them a low risk, but they do like it very
26 much when they give them a high risk.

27 But that's not why we're here. I'm here to
28 concur in the opposition to Mr. Farmer being a commissioner on

1 the Board of Prison Terms. I have appeared -- I did not write a
2 letter in opposition, but I did want to speak to you about him
3 because I have appeared before him on a few occasions over the
4 past year or so. And each time that he was a not a
5 commissioner, he acted, in my opinion, as a district attorney,
6 because my clients were faced with the retrying of their case,
7 which is not relevant to their suitability for parole because
8 the relevance has already been done. They're convicted, and the
9 board will state in the beginning of a hearing that we are here
10 not to retry this case. We stand by the conviction of the
11 court, which is the findings of the court, which always, of
12 course, a conviction.

13 However, in Mr. Farmer's case, he asked my
14 clients to go over the facts: were you in the right-hand bush,
15 I'm paraphrasing, an analogy, were you in the left-hand bush?
16 Things like that, that did not matter. I thought it was
17 irrelevant. And I really felt he was a district attorney.

18 And when he gave multi-year denials or denials at
19 all, even with a very -- any objective measure a very deserving
20 candidate who was not a danger to society in any terms or by any
21 measure, he would deny them parole after having retried the case
22 once again.

23 Based on that, I literally have begun advising
24 all of my clients to make the choice, it's their choice, not to
25 discuss the facts of the life offense any more because I don't
26 want people like Mr. Farmer, as a commissioner, deciding their
27 fate by being a district attorney, by retrying their case, and
28 finding them, of course, guilty for further observation in

1 prison.

2 And I would submit on that.

3 CHAIRMAN PERATA: Thank you.

4 Yes, ma'am.

5 MS. MONTGOMERY: Thank you. My name is Cheryl
6 Montgomery. I'm a defense attorney.

7 And I really hadn't planned on speaking, but you
8 began to speak about Doreen Patrick. And I was her counsel at
9 her last hearing. And you indicated this was going to be a
10 topic of discussion for all of the commissioners.

11 I want to give you just some very brief history
12 so you'll understand what occurred.

13 There was, in fact, a split decision. The deputy
14 commissioner voted to grant her parole, and the commissioner,
15 who was Commissioner Lee, voted to deny her one year.

16 At the end of that hearing, when they issued
17 their decision, they told her, "This is going to go en banc
18 before the entire board. They're going to take a look at your
19 case." Essentially, Commissioner Lee told her, "The worst case
20 scenario is that you are going to wind up with a one-year
21 denial."

22 Now, that decision is exactly what went to the
23 full board. They had those words in front of them.

24 Also, those decisions arrived, the en banc
25 decisions, they're posted on the internet at like 5:00 o'clock,
26 at the end of the board meeting. And I was absolutely appalled
27 to see that it had been a four-year denial.

28 There was also another person that was the

1 recipient of one of those, in I believe a split vote as well.

2 I wrote a letter to then-executive officer Mr.
3 Kinneally and expressed my outrage over that, and it was after
4 that. And I believe over the course of maybe one or two months,
5 when finally it got put back on calendar, and it was changed to
6 a one-year denial.

7 This was not -- there are those individuals that
8 might have deserved a four-year denial. This was an individual
9 that had received a date, I believe, on two, possibly three
10 occasions, but at least two. So, she was hardly marginal.

11 I thought that the history in that case might be
12 important to you in your questions.

13 CHAIRMAN PERATA: Thank you.

14 MS. MONTGOMERY: Thank you.

15 CHAIRMAN PERATA: Yes, sir.

16 MR. WATTLEY: Thank you. My name is Keith
17 Wattley. I'm a staff attorney at a place called the Prison Law
18 Office, where we represent prisoners and parolees in a number of
19 cases against the state.

20 And I've been working on lifer parole cases for a
21 number of years now and had quite a few dealings with the board
22 generally.

23 I have some general observations, I think, that
24 will address some of the concerns that some of you've raised
25 already. And I have some specific comments also about
26 Mr. Farmer.

27 The very beginning of this hearing, there was a
28 discussion about the legislative mandate under which this board

1 operates. And I think it should be kept in mind that this is
2 not a new mandate. It's been recognized by the California
3 Supreme Court for almost an 100 years that the Legislature's
4 purpose in drafting these parole statutes was to allow for
5 prisoners to be released from parole at the earliest point
6 permitted by law. And that's part of the reason they put in the
7 statute that paroles shall normally be granted. Only in
8 exceptional cases should parole not be granted.

9 The courts have consistently said that the
10 exception cannot swallow the rule. And in fact, that is what
11 has happened. And I know Mr. McQuillion quoted some numbers.

12 What I've seen, even in the last year, the
13 commissioners have parole granting rates ranging from around one
14 percent to up to six or seven percent, no where near the normal
15 granting of parole.

16 But it's something to keep in mind, especially
17 when you consider, as you've also talked about, the diversity
18 issue on the board, that it's not an accident that these
19 commissioners are not granting parole at a higher rate. It's by
20 design. It's by intention. It's why the Governor appoints
21 these people.

22 But it's up to this Legislature to decide who
23 they want to continue to operate under the statute. And I would
24 say that you get to say whether they get to stay on this board,
25 and you get to say whether they're actually following the law.
26 I say they're not.

27 I don't have to go over who makes up the board.
28 I know you understand the diversity issue.

1 SENATOR CEDILLO: I'm interrupting your
2 testimony.

3 Under this normal standard, you quoted a state
4 statute. In the normal standard, is there some quantitative
5 measure of that?

6 MR. WATTLEY: Well, says --

7 SENATOR CEDILLO: Is it 50 plus one?

8 MR. WATTLEY: It says, "shall normally except."
9 And the "except" allows the board to deny if this -- if the
10 circumstances of this crime show that the prisoner's currently
11 dangerous.

12 Now, no court has ever said what "normally" means
13 in terms of numbers, but it ain't one percent.

14 You talked about a couple of things that are
15 covered. I also represent --

16 SENATOR BATTIN: I'm sorry.

17 MR. WATTLEY: Please.

18 SENATOR BATTIN: One of the things I asked
19 specifically from the nominees to provide us and from the board
20 executive director was to provide us a breakdown of how many
21 hearings each had, how many denials they had, how many grants
22 they had.

23 They're not even close to 99 percent. I
24 understand that it's easy to say Mr. Farmer, in his time, has
25 denied 81.7 percent.

26 You might not agree with that, but within the
27 discussion here, let's just make sure that we are discussing it
28 accurately. It's not 99 percent, and Mr. Farmer is not

1 responsible for the board, past, present or future. He's
2 responsible for himself. That's how we have to look at it.

3 I'm sorry to interrupt you.

4 MR. WATTLEY: That's perfectly fine. So I
5 understand, your information, I think, is a lot more current
6 than mine. What I have covers the year 2005 and those
7 commissioners who were sitting at the time. And I see that
8 there were some commissioners who -- just to deal with ones who
9 are still on the board, it looks like Ms. Fisher during that
10 year granted parole in 2 percent of the cases she heard. That
11 was 19 grants out of 776 hearings. Now --

12 SENATOR BATTIN: Was this while she was doing the
13 Rutherford case, where she was doing parole hearings at Level
14 Four facilities, where by virtue of the fact that an inmate is
15 at a Level Four facility, he is deemed high risk, and that he is
16 problematic? That's the record?

17 MR. WATTLEY: I'm actually glad you mentioned
18 Rutherford, because I'm actually the lawyer who represents the
19 prisoners in Rutherford. Mr. Farmer has referenced the
20 Rutherford Task Force that's been working on these issues.

21 I've never been a part of their conversations.
22 I've never be allowed to participate in the task force to
23 address these issues.

24 There was a proposal to have Ms. Fisher, or some
25 other commissioner, review cases of prisoners who've been denied
26 for long period of time, five years, for example, which is the
27 statutory maximum in murder cases. And the effort was to figure
28 out how, do we get these cases to go away? How do we get them

1 off of the calendar?

2 Now, either we find a way to get those people to
3 agree to a longer period of denial, or we find a way to speed up
4 their hearings so that we can get through them and move on to
5 other cases.

6 To me, the whole effort shows that the board's
7 intention is not really do give people a full and complete and
8 fair consideration of their suitability for parole.

9 SENATOR BATTIN: Do you have the expectation that
10 the board should grant paroles from lifers that are in Level
11 Four facilities at the same rate that they do lifers that are
12 Level Two facilities?

13 MR. WATTLEY: What you have to keep in mind is
14 that the board has two functions. One is to grant parole. The
15 other is to set a date, set a term that that person should
16 serve.

17 Prisoners in Level Four facilities often have
18 more serious crimes, or have several crimes. Sometimes they
19 have in-custody misconduct that sends them there.

20 But the board's goal -- the board's
21 responsibility --

22 SENATOR BATTIN: Typically that's why they're
23 there. They get moved up -- there are serious offenders in
24 Level Two facilities because they are model prisoners. The CDC
25 does not view them as high risk.

26 They go to a Level Four, which is all about, you
27 know, they move around less. They're watched more. Their
28 privacy is less. I mean, it's a higher level of incarceration

1 because they're not doing well within the prison.

2 So, to have an expectation that you would have
3 the same parole rate at a Level Four facility as you would have
4 at a Level Two, I don't think is realistic.

5 CHAIRMAN PERATA: We are in this area of angels
6 on heads of pins.

7 I would like to bring the conversation back to
8 the case at hand. And 2 percent, 12 percent, 15 percent. Maybe
9 there's a standard out there somewhere, and we can discuss that
10 at another time.

11 But I'm really concerned. I think you were going
12 to talk a little bit about rescission, and I'd like you to go
13 into that.

14 MR. WATTLEY: Well, rescission is one issue, but
15 there's also the issue -- we touched a little bit about the
16 psych -- well, quite a bit about psych evaluations.

17 I would just say that in the Rutherford case,
18 we've discovered a number of problematic areas. One is psych
19 evaluations, where over the last few years, thousands of
20 hearings have been postponed or cancelled because of a dispute
21 about the psych evaluation. Either it's too old, or we have a
22 problem about it. We're not sure what the psychologist
23 intended. We want to postpone the hearing.

24 I submit that it's been a way get more cases off
25 the calendar in the short-term and put them off into the
26 future.

27 Some really disturbing things we discovered in
28 the Rutherford case. One was that commissioners are coercing

1 prisoners into stipulating to being unsuitable under the threat
2 of a multiple-year parole denial if they go through with their
3 hearing. They're saying, you know, "You can come in here and go
4 through this hearing if you want, but you're probably going to
5 be denied two, three, four years. Or, you can just stipulate to
6 being unsuitable for one year, and we'll skip the hearing."

7 Now, courts have found that they're doing that.
8 The Rutherford court found that they're doing that, ordered them
9 not to do that, not to improperly encourage prisoners from doing
10 that.

11 Another disturbing finding, you talked about
12 multiple-year parole denials in the past, not only are they
13 handing out these multiple-year denials for strange reasons, but
14 they are handing out multiple-year denials following not just a
15 one-year denial. Sometimes, in the event of a prisoner who's
16 been granted parole at a prior hearing, and the Governor
17 reversed it, they come back to the board, multiple years
18 denied. And there's been no change in the prisoner's case.

19 Now, the Rutherford court also identified this as
20 a problem, specifically ordered them not to do that. Said that
21 if you're going to increase the period of denial, you have
22 explain some significant change in the prisoner's case.

23 That's one of the two issues in all the
24 Rutherford case that they're appealing. They don't want to have
25 to explain these multiple-year denials even after a parole
26 grant.

27 It's just more indication of how biased the board
28 is against giving people a fair hearing.

1 CHAIRMAN PERATA: Now, bring this back to
2 Mr. Farmer, please.

3 MR. WATTLEY: One of the things that came up in
4 the last year was that when a case goes to the Governor's Office
5 that is not a murder case, the Governor can't reverse the date.
6 So, he can send it back to the board for reconsideration, but
7 all he does is, he can ask the board to conduct a rescission
8 hearing, consider rescinding that prisoner's date.

9 I know of a couple of cases, one was a client of
10 mine, in which, at Mr. Farmer's direction, the full board,
11 rather than schedule a rescission hearing for a prison who
12 they'd already granted a date to, the full board voted to take
13 his date. We're going to rescind the date without a hearing.

14 Now, this went -- this policy went against the
15 statutes, it went against the case law, it went against the
16 regulations, it went against the board's practice for years.

17 When I asked Mr. Farmer about it, he said, "I
18 don't think we need to give him a hearing." That was the extent
19 of his explanation. "I don't think we're required to do that."
20 In other words, he's willing to -- he's willing to ignore the
21 established legal precedent because he didn't think prisoners
22 had any rights in this regard.

23 I have other observations, but I'll save them.
24 I'm prepared to rest on that.

25 I definitely implore this Committee not to
26 confirm Mr. Farmer as a commissioner.

27 Thank you.

28 CHAIRMAN PERATA: Thank you, sir.

1 That concluding the opposition, any further
2 questions before we allow Mr. Farmer to close?

3 Sir, you may close or respond, whatever you
4 choose to do.

5 MR. FARMER: This is -- obviously, my view of
6 some of the things that were said are different than were
7 expressed by the opposition.

8 I understand that this is not a court, and we're
9 not here to resolve those kinds of issues, but there is another
10 side.

11 I think the bottom line is -- and I also
12 understand that there are significant issues before the board as
13 a whole that need to be both addressed and resolved. And I
14 think that the ability of the board as a whole to address those
15 have been in part because of, oh, the problems connected with
16 the reorganization, and what the appropriate policy-setting role
17 of the board was. Those have been items that have been
18 discussed with the Governor's Office.

19 If you'll notice in my response, I talk about the
20 need, as Senator Ashburn has indicated, for the board to take a
21 more assertive policy role in addressing some of these issues
22 that are of concern to the Committee and are of concern to the
23 board, and do need to be resolved. They've been sitting around
24 for a long time.

25 The bottom line is that, you know, in conducting
26 my hearings, I seek to be fair and to apply the law as it has
27 been the practice of the board, looking to the cases that have
28 come out of the Supreme Court. And the Dannenburg case really

1 has addressed this issue of normally set a date, and weighed
2 that phrase against the finding of suitability.

3 So, certainly if there was a different decision,
4 it would be our role to follow that decision.

5 But again, I think in reality, the best day of
6 this job is when somebody has been found suitable because you
7 know they've worked hard for it. I think my record reflects
8 that I certainly am willing to do that in an appropriate case.

9 And again, thank you for the opportunity to
10 address these issues before you, and I appreciate that.

11 CHAIRMAN PERATA: Thank you.

12 Before we conclude, one is the matter of
13 rescission. We do have an Inspector General, and I'm going to
14 ask the staff to have him look into the matter. It seems to me
15 that we shouldn't have to go to court every time there's some
16 concern about methods in which this or any other board does
17 business. So it just does, on the face of it, seems to flunk
18 the fairness test.

19 Second, on the question of the reliability -- and
20 I did not major in psychology -- on the question of the worth of
21 psychological reports and differences of opinion, I have a good
22 friend that's just undergone a series of examinations for
23 cancer. He went to five different doctors, got five different
24 recommendations for how to deal with that cancer.

25 Now, you know, there wasn't any right answer.
26 There were five different opinions based upon five different
27 medical evaluations.

28 It's the best we've got. You have to have some

1 standard of evaluation. And until we come up with a better one,
2 we either decide that the psych evaluations are valuable or
3 they're not. If they're not valuable, throw them out. If they
4 are valuable, God damn it, make them current.

5 I wouldn't want to have anybody judge me between
6 the life I lived when I was 18 and the time I was 25. And I
7 don't know that I'd want to say today that I'm not a better
8 person today than I was five years ago. I certainly have some
9 different views in life, having spent five years in this
10 institution.

11 So anyway, those two points.

12 With that, pleasure of the Committee?

13 SENATOR BATTIN: Move.

14 CHAIRMAN PERATA: We have motion to approve.

15 Call the roll.

16 SECRETARY WEBB: Ashburn.

17 SENATOR ASHBURN: No.

18 SECRETARY WEBB: Ashburn No. Cedillo. Battin.

19 SENATOR BATTIN: Aye.

20 SECRETARY WEBB: Battin Aye. Perata.

21 CHAIRMAN PERATA: No.

22 SECRETARY WEBB: Perata No.

23 SENATOR CEDILLO: Cedillo No.

24 SECRETARY WEBB: Cedillo No. One to Three.

25 CHAIRMAN PERATA: The appointment is not
26 recommended.

27 Thank you, sir.

28 We're going to take a 15-minute break in

1 deference to our scribe.

2 [Thereupon a brief recess was taken.]

3 CHAIRMAN PERATA: Mr. Biggers, you just got your
4 fourth vote.

5 [Thereupon the Final Vote
6 on BIGGERS was 4-0 for
7 confirmation.]

8 CHAIRMAN PERATA: Senator Harman, who is newly
9 minted. Senator Harman's been a Senator for a couple days, and
10 doesn't look any the worse for wear.

11 SENATOR HARMAN: So far so good.

12 CHAIRMAN PERATA: Senator Harman, proceed.

13 SENATOR HARMAN: Thank you very much,
14 Mr. President and Members of the Rules Committee.

15 It's my pleasure to introduce to you at this time
16 Phillip Inglee, a nominee for the board. Mr. Inglee is --

17 CHAIRMAN PERATA: Mr. Inglee, would you like to
18 come up, or do you not want to sit next to him?

19 [Laughter.]

20 MR. INGLEE: Actually, we contested for an office
21 one time.

22 CHAIRMAN PERATA: Really?

23 SENATOR HARMAN: I'll tell you that story. It's
24 a very interesting story.

25 CHAIRMAN PERATA: Please.

26 SENATOR HARMAN: I've known Phil Inglee for over
27 20 years, a long-time resident of Huntington Beach. You know
28 from his resume that he has a distinguished career in the United

1 States Marine Corps, serving active duty for several years and
2 in the reserves for many years, I think nearly 30, retiring at
3 the rank of Colonel.

4 He had a long history in the banking industry,
5 working for an international bank. When that career sort of
6 wound down, he decided he'd really get into the banking and
7 formed, along with a number of other local residents in the
8 Orange County area, a local bank, Liberty National Bank, which
9 became a very successful bank. He served as president of that
10 bank.

11 He has served on the Orange County Grand Jury, I
12 believe as President of the Grand Jury -- foreman. And he's
13 also been very active in charitable organizations, particularly
14 the Community Clinic, which is the largest community clinic in
15 Orange County. And under his guidance as President of the Board
16 of the Community Clinic, it has expanded and provides extensive
17 treatment to uninsured and underinsured individuals in need of
18 medical, dental, and eye care in the Orange County area.

19 I know Phil to be an honest and fair person, a
20 very compassionate person, and I strongly recommend that you
21 approve his nomination.

22 So without any further ado, I am most pleased to
23 introduce him to the Rules Committee.

24 CHAIRMAN PERATA: Thank you, Senator.

25 You're a Marine.

26 MR. INGLEE: Yes.

27 CHAIRMAN PERATA: Archie, were you a Marine?

28 MR. BIGGERS: Always, sir.

1 CHAIRMAN PERATA: I know about that "always"
2 stuff. I saw the movie.

3 Mr. Inglee, please introduce yourself to us.

4 MR. INGLEE: I think Senator Harman's done a good
5 job in doing so, but let me just very quickly, I've lived in
6 California since I came here as a Marine in 1960. After
7 returning from overseas, I decided to make California my home.
8 After raising a family, completing 40-plus years as a banking
9 executive, and 30-plus years as a Marine Corps Reserve Officer,
10 retiring as Colonel, I then decided to retire.

11 I became very bored and decided I would enter
12 into public service and became the chairman --

13 CHAIRMAN PERATA: Did your wife fill out the
14 application?

15 [Laughter.]

16 MR. INGLEE: I think she got a little tired of me
17 being around the house, to be very frank with you.

18 I then had the opportunity to join the board of
19 Community Clinic. It's about a \$10 million operation. It's a
20 very large clinic. I eventually became the Chairman of the
21 Board, instrumental in being able to purchase other clinics and
22 also starting a dental summer program for indigent people and
23 folks who are unable to access dental services.

24 I decided when that came up, the opportunity
25 presented myself to go on the Grand Jury. I then became foreman
26 of the Grand Jury.

27 Once that was completed, one of the judges asked
28 me if I then would become the Parole Commissioner for Orange

1 County, which certainly in no way, shape, or form is at the
2 level of the type of commissioner that I am today. However, it
3 did give me an opportunity to get a feel towards the penal
4 system, being able to deal with inmates, and certainly getting
5 in and out of prisons and feeling comfortable in doing so.

6 I'm in the most challenging of all my positions
7 today, being a commissioner on the Board of Parole Hearings. I
8 strive to successfully achieve that very delicate balance
9 between the rights of the prisoners, and certainly the ultimate
10 safety of the citizens of California.

11 I hope today to be confirmed. I'd like to
12 continue this important public service and go on doing what I
13 think I do well.

14 CHAIRMAN PERATA: Thank you.

15 I neglected is to ask before, I'll ask now, do
16 you have, Mr. Biggers, do you have any family here that you
17 wanted to introduce?

18 MR. BIGGERS: No, sir.

19 CHAIRMAN PERATA: Do you have anybody here?

20 MR. INGLEE: No, sir.

21 CHAIRMAN PERATA: Let me just ask you the two
22 questions. Generally, you've heard the discussions that we've
23 had about psych evaluations.

24 I would just be interested in knowing maybe the
25 relative merits, whether or not you think they have any value,
26 but much more importantly, the way in which they come to you,
27 and how ripe they are by the time you read them?

28 MR. INGLEE: That's a multi-faceted question.

1 CHAIRMAN PERATA: I'm good at that.

2 MR. INGLEE: Let me deal specifically with --

3 CHAIRMAN PERATA: Yes or no is fine.

4 MR. INGLEE: I would love to be able to give you
5 that answer.

6 Every time I receive a board package, and it's
7 about three or four days prior to my actually going out in the
8 field, everyone of them has a psych eval. Probably the average
9 age is around three years. Sometimes they're five or six, but
10 that's becoming less and less of an issue. As time has gone on,
11 we seem to have -- the psych evals seem to be more and more up
12 to date.

13 They are -- they do vary with their accuracy.
14 They do vary in form. They do vary with the approach that the
15 psychiatrists take towards the prisoner.

16 That makes it difficult for a novice like myself,
17 who might have had that one semester of psychology, unlike
18 Senator Battin. And therefore, I have to be sure that I read it
19 and understand what I'm reading.

20 I use it as a tool, I think that term was used
21 before, among other facets of a prisoner's presentation and how
22 he appears to me when he comes in.

23 I don't use it as an instrument to stop him from
24 being paroled, nor do I use it as an instrument to try to move
25 ahead. It is a part of the puzzle that goes into making a
26 decision about a prisoner.

27 Accuracy, there's a lot of conformity. There's a
28 lot of sameness that seems to come out of it. Thank God for

1 word processing machines. I'm not sure what would happen, what
2 we'd be receiving from them.

3 It may sound like I'm being overly critical, but
4 I think there needs to be a cure. The cure, I believe, is a
5 separate team of psychiatrists who in fact are objective, and
6 who in fact have an expertise in the area of being able to take
7 a look at and make decisions on elements of risk.

8 CHAIRMAN PERATA: The other question is, you were
9 part of the four-year, the Doreen Patrick --

10 MR. INGLEE: Yes.

11 CHAIRMAN PERATA: Maybe the similar questions
12 that the Senator brought up earlier.

13 MR. INGLEE: When the issue came up in this case,
14 and I have to tell you, it's one of many, many cases we've had,
15 so I've had to -- I've sat back there, trying to remember
16 exactly the case and what the circumstances were.

17 My recollection of the case was, is that when it
18 came before us, the then legal counsel, and that was not
19 Mr. Farmer. It was -- the gentleman's name escapes me now.
20 He's no longer there.

21 He in fact presented and gave us the options that
22 were available to us, one of which, of course, was to be denying
23 her for a longer period of time. The person, Commissioner Lee,
24 who was the one who originally brought it forward and originally
25 had given her or voted for a one-year, then made a presentation
26 which, as I recall at the moment, built a very strong case
27 towards doing more than a one-year denial.

28 I respected Commissioner Lee. I listened to his

1 presentation. I listened to the arguments that went on. And
2 when we finally came to a vote, I voted for four years.

3 Now, can I sit here and strongly defend my
4 position? No, I can't, Senator, to be very frank with you. It
5 was a long time ago, and that's the most I can recall from it.

6 CHAIRMAN PERATA: Any questions?

7 Anybody here in support?

8 MS. BUCHALTER: Linda Buchalter, lawyer.

9 I would ask that you confirm Commissioner Inglee
10 for several reasons.

11 First and least of the reasons is that he does
12 represent what the law contemplates, which is a cross section of
13 society, coming from military and banking as he has, which I was
14 recently informed of.

15 I have appeared before this commissioner on
16 several occasions. He has both denied my clients parole, and he
17 has granted my clients parole.

18 I am impressed with him because he is one of the
19 few commissioners that, when he denies my client a grant of
20 parole, even though I might disagree, I can at least respect his
21 decision. I find that when he examines my clients, he does it
22 with integrity. He asks questions that are insightful. They
23 illuminate.

24 The one question which we're there to answer, the
25 legal question, is, there's only one to be answered: If we let
26 you go home, do you pose an unreasonable risk of harm to others?
27 His questions are very much geared to answering that particular
28 question.

1 He is thorough in his examination of my clients.
2 I can respect that.

3 And I also want to add that even though I have
4 stepped forward to sit beside Commissioner Inglee and to support
5 his confirmation, I do know that when I appear before him --
6 because I have many, many clients in prisons throughout the
7 state, and I will be bumping into him, I'm certain, if he is
8 confirmed, I hope he is -- I know that his integrity when I
9 appear before him, this statement of mine today will not buy my
10 client a grant of parole. I believe in his integrity to the
11 utmost, that if he believes my client is not deserving, he will
12 continue to deny that, and I will probably continue to respect
13 that.

14 I urge his confirmation today.

15 CHAIRMAN PERATA: Thank you.

16 MR. McQUILLION: Carl McQuillion, McQuillion
17 Paralegal Service.

18 I would also like to support Mr. Inglee's
19 confirmation, basically for the same reasons as Ms. Buchalter
20 has said. He does represent a cross section.

21 I find it difficult to support any of the
22 political appointees that we've had. In this particular case,
23 like Ms. Buchalter, I don't -- I'm different than her. I don't
24 represent anybody before the Board of Prison Terms, of course,
25 but I get to deal with the transcripts and litigation later.

26 And so, I have read a number of transcripts in
27 which he has appeared, and I do agree that his questioning and
28 his handling of these prisoners' cases seem to be fair and

1 impartial, which is a very important thing.

2 He does ask very intelligent and reasonable
3 questions. And for that reason, I would have to give my
4 support.

5 I would like to ask the Committee to speak to him
6 again about one aspect of the psychological reports, one that
7 you may not be aware of, and I'd like to bring it to your
8 attention.

9 In the late '90s and the early 2000s, the Board
10 of Prison Terms at the California Men's Colony received
11 complaints from some of the psychologists that they were being
12 asked to write repeated psych evaluations, yet the board seemed
13 to be ignoring these evaluations. They were getting tired of
14 being burdened down with these evaluations.

15 So, they struck a deal that was called a
16 Memorandum of Understanding, and they had agreed that if they
17 could come up with some kind of a psychological instrument which
18 would allow the board to -- or the psychiatric department to
19 make one evaluation, they would never have to make another
20 evaluation again.

21 Out of that memorandum came a tripartite
22 psychological risk assessment instrument. And this was made up
23 of three tests. One was called the PCLR; one was called the
24 HCR-20; and the other one was called VRAG, the VRAG as it's
25 called.

26 These tests were normed on severely mentally
27 disabled people. It was never normed on the lifer population.
28 One of their own psychologists who had been a psychologist in

1 the Department of Corrections for 30 years, and who retired and
2 came back to work for the department on contract, Doctor Melvin
3 MacComber, wrote a letter at my request. Actually, I had sent
4 him these instruments for analysis.

5 And then I got a letter back from him, and I
6 asked him to write a letter regarding those tripartite systems.
7 And he condemned them on the basis that these instruments,
8 testing instruments were never normed in a proper population,
9 lifer population.

10 I also have the documentation from Sweden, where
11 it was normed on a severely mentally disabled population, which
12 was totally inappropriate to apply to lifers. And one of the
13 reasons is that the --

14 CHAIRMAN PERATA: Excuse me; let me stop you.

15 I'd love to see what you're talking about.
16 There's no way in the world I could ask a question based upon
17 what you just said.

18 So, could you just give me that, because we're
19 going to pursue this.

20 MR. McQUILLION: Okay. Let me say one more thing
21 about the VRAG, and I'll close. It'll just take a second.

22 CHAIRMAN PERATA: Go ahead.

23 MR. McQUILLION: Of the three tests, there is
24 one, the VRAG. This test comes out exactly the same whether it
25 was given to the inmate the day of the crime, or after the
26 crime, or 30 years later. It never changes. It's based
27 strictly on static history factors and nothing else.

28 When these three tests are applied, one test may

1 give it moderate, and one test may give it moderate or low to
2 moderate, and the VRAG one might give it high, give it high.
3 And because of the VRAG, that will elevate the rest of the test
4 up to moderate, or moderate to high.

5 And they, the board, determines that moderate is
6 unreasonable, constitutes unreasonable risk, and they'll deny
7 parole simply on the fact that the VRAG gave them a high rating,
8 or a moderate rating. And they'll say, "Well, he's unsuitable
9 for parole."

10 This is an inappropriate test, and it needs to be
11 addressed.

12 CHAIRMAN PERATA: Thank you.

13 Is anybody here in opposition? Seeing none.

14 SENATOR BATTIN: Move.

15 CHAIRMAN PERATA: We have a motion to approve.
16 Discussion by board Members?

17 Call the roll, please.

18 SECRETARY WEBB: Cedillo.

19 SENATOR CEDILLO: Aye.

20 SECRETARY WEBB: Cedillo Aye. Battin.

21 SENATOR BATTIN: Aye.

22 SECRETARY WEBB: Battin Aye. Perata.

23 CHAIRMAN PERATA: Aye.

24 SECRETARY WEBB: Perata Aye. Three to Zero.

25 CHAIRMAN PERATA: We'll keep the roll open for
26 Senator Ashburn.

27 Congratulations.

28 MR. INGLEE: Thank you, sir.

1 CHAIRMAN PERATA: Semper Fi, and you guys
2 represented the Corps well today, you two.

3 MR. INGLEE: Semper Fi, we have another one
4 coming on. You'll meet him in six months.

5 CHAIRMAN PERATA: Thank you so much.

6 Oh, here we go, Senator Ashburn.

7 SECRETARY WEBB: Senator Ashburn on Inglee?

8 SENATOR ASHBURN: Aye.

9 CHAIRMAN PERATA: Four-zero; congratulations,
10 sir.

11 And now Ms. Fisher, deja vu. Welcome.

12 MS. FISHER: Thank you.

13 CHAIRMAN PERATA: You may open.

14 MS. FISHER: Thank you.

15 I was here just a year ago, and Senator Morrow
16 made up a lot of really nice things about me, so I don't think
17 that I can compete with what he had to say.

18 Other than to say, I've been on the board now for
19 a little over two years. It's been a very interesting
20 experience.

21 I'm here to answer any questions that I can.

22 CHAIRMAN PERATA: Okay. Senator Morrow, by the
23 way, is also a Marine. A lot of it going around.

24 So you're the chair now. The Governor, as you've
25 mentioned in your submittals, that recently redefined your
26 role. How so?

27 MS. FISHER: It seems to be sort of continuously
28 in flux.

1 When the reorganization first happened, when the
2 reorganization first came about, the chair was strictly a
3 hearing officer, and was going to be in the field all the time,
4 which I am 99 percent of the time.

5 There was an indication to me from the
6 Governor's Office that they felt that there should be some more
7 involvement with the chair in what's going on within the office
8 administratively and with the executive officer simply by virtue
9 of the fact that if the chair isn't involved in some of those
10 discussions, then no one who's actually out doing hearings is
11 involved in those discussions.

12 So, that's sort of still in the midst of change.
13 I'm simply trying to do what I'm asked.

14 CHAIRMAN PERATA: Can you characterize the
15 difference between the Ex.O. and you, how the roles delineate?

16 MS. FISHER: Absolutely. The Ex.O. runs the
17 office and is the person in charge on a daily basis.

18 I am, for all practical purposes, simply a
19 hearing officer. I do have, especially at this particular time
20 with Mr. Mundy in the office, we have a very good working
21 relationship in general, and we have a lot more conversation
22 probably than I might have with someone else, simply by virtue
23 of the fact that we do have a relationship and have known each
24 other for a long time.

25 We talk to each other on a fairly regular basis.
26 And I'm able to, you know, voice my opinion and give input, and
27 also speak with other commissioners if there are issues or
28 questions that need to be addressed.

1 CHAIRMAN PERATA: When you say the Governor has
2 recently redefined your role, was it him, capital "H", or one of
3 his minions?

4 MS. FISHER: Staff.

5 CHAIRMAN PERATA: Which minion?

6 MS. FISHER: Various and sundry.

7 CHAIRMAN PERATA: Lots?

8 MS. FISHER: Yeah. There have just been
9 discussions about what the chair should be doing, and whether or
10 not it was extreme to have the chair --

11 CHAIRMAN PERATA: So, you don't respond to one
12 particular person in the Governor's Office?

13 MS. FISHER: No, I don't have one person that I
14 have been asked to report to, no.

15 CHAIRMAN PERATA: Unusual for the Governor's
16 Office.

17 MS. FISHER: Is it?

18 CHAIRMAN PERATA: Yes. I don't know whether or
19 not to congratulate you.

20 MS. FISHER: I've never done this before, so I
21 don't know.

22 CHAIRMAN PERATA: A lot of them haven't either.
23 You got here, and we heard you last January, a
24 year ago January.

25 MS. FISHER: It was March actually.

26 CHAIRMAN PERATA: We asked some questions at that
27 time about your impartiality based upon your experience, your
28 personal experiences.

1 How would you evaluate that? How do you think
2 you did on that?

3 MS. FISHER: I try to go into every hearing with
4 an open mind and listen to the information, then base my
5 decision on what I -- what I see and hear there.

6 From my perspective, I don't have a problem doing
7 that. There's a lot of urban legends out there, and I know that
8 when I came before you the last time, there was an allegation
9 that I would never give a date, and then there were allegations
10 that I would give a date to a murderer, and that I might give a
11 few token dates until I got confirmed. You know, that I was
12 here with an agenda.

13 That's just simply not the case.

14 And as one of the earlier commissioners said, and
15 I'm not sure who to give credit to, the best day at work is the
16 day that you're able to find somebody suitable for parole. It's
17 a very emotional experience to see someone who's worked very
18 hard and about whom you have absolutely no doubt that they're
19 going to go out and do well.

20 CHAIRMAN PERATA: Tell me about the Doreen
21 Patrick decision.

22 MS. FISHER: What Mr. Inglee said is essentially
23 what happened. Doreen Patrick's case came to us as a full
24 board. There was a lot of discussion among the commissioners,
25 and Mr. Lee was part of that discussion, of course, about our
26 concerns with her lack of insight, and the fact that this was a
27 case where she had killed her child.

28 And there was -- there was just -- there were

1 behaviors in prison that gave us concern, and one of them was
2 that during the time that she was incarcerated, she had contact
3 with, I believe it was a male inmate and became pregnant again.

4 And Mr. Lee was the one, the person who I believe
5 made a comment to the effect that she just didn't get it, and
6 that there didn't seem to be insight into how her behaviors
7 eventually impacted.

8 CHAIRMAN PERATA: Who is Mr. Lee again?

9 MS. FISHER: Mr. Lee was the commissioner who had
10 voted to deny for a year.

11 Now, what we did during that --

12 CHAIRMAN PERATA: He came back and had a change
13 of heart?

14 MS. FISHER: Well, no. He came back was talking
15 with us about his feelings about her lack of insight and why he
16 had denied.

17 CHAIRMAN PERATA: He denied for a year.

18 MS. FISHER: Right.

19 CHAIRMAN PERATA: Did he advocate for a four-year
20 denial?

21 MS. FISHER: I don't know that he necessarily
22 advocated for any kind of specific time period.

23 It's my recollection, and as Mr. Inglee said,
24 it's been a long time, and we see a lot of these cases. And we
25 didn't have the benefit to review this one before we came
26 today.

27 But it's my recollection that we asked counsel,
28 our chief counsel at the time, what are our options here,

1 because there was a general concern among the commissioners that
2 we didn't feel that a year was a reasonable amount of time,
3 based on what we saw on paper.

4 As I recall, our chief counsel told us that we
5 could basically do what we felt was reasonable. And then later
6 he reevaluated the situation, apparently, was in the process of
7 looking at the law, said that he felt that it was vague, and
8 that perhaps his advice had not been what it should have been.

9 And the case came back to us again as a full
10 board, and we -- I believe I made the motion to make the change.

11 CHAIRMAN PERATA: So, typically if you are acting
12 in an appellate manner, is it typical for the commissioner --
13 you don't have a transcript? They just come up and tell you
14 what they did?

15 MS. FISHER: We have the transcript. And there's
16 been --

17 CHAIRMAN PERATA: Is it unusual for the
18 commissioner to come before you when you're en banc?

19 MS. FISHER: No, oh no. And -- but there's been
20 a disconnect, and we're attempting now to correct that, in that
21 the commissioners would be there, just by virtue of the fact
22 that they're there for the meeting, so the commissioner could
23 talk about their position on a split vote, and the deputy
24 commissioner wasn't there.

25 So, there are those of us who felt that the
26 deputy commissioner should be there on a split vote. And we are
27 making that change.

28 CHAIRMAN PERATA: I had read that you'd been on

1 special assignment With one deputy commissioner since January.
2 What is that assignment?

3 I believe you told staff that's part of the
4 restructuring, or how to make things work better.

5 How is that going?

6 MS. FISHER: What happened was that as a result
7 of the Rutherford decision, I was asked by a couple of the
8 gentlemen in our office, our legal office, who were working on
9 the Rutherford decision, whether I was willing to do kind of an
10 experiment to see if there were things that we should do
11 differently in the way that we conduct our hearings.

12 And one of them had some ideas that he wanted to
13 try specifically in working with inmates who were at Level Fours
14 and who had some fairly obvious factors of unsuitability, like
15 that they were in the SHU for stabbing their cell mate, or
16 something like that.

17 He had some ideas for things that we might do,
18 other than the way we're handling them now, which is as if all
19 institutions and all inmates were the same. And that's not the
20 case. If we have somebody in the SHU at Pelican Bay, he's a
21 different animal than the guy who's the wonderful programer
22 who's had a great disciplinary history, who might be at CTF in
23 Salinas Valley.

24 So, he had some ideas that he wanted someone to
25 try out.

26 The original plan was to have two teams of two
27 commissioners and two deputy commissioners do it, and that just
28 didn't work out. We have a hard time getting deputy

1 commissioners to do lifer hearings because it's an unpleasant
2 way to live. So, we did take it on as a project to see what
3 would happen.

4 Ultimately, my feeling was that the hearing that
5 we do already is more than adequate, and it's what we should be
6 doing, but that we should also, in conducting hearings, look at
7 the person individually, and look at the areas -- maybe we need
8 to pay more attention to parole plans with someone who is in a
9 Level Two prison than we do with somebody who's in a Level Four
10 prison. And that the hearing can be sort of personalized for
11 each individual inmate.

12 CHAIRMAN PERATA: What's Title 15?

13 MS. FISHER: What is Title 15?

14 CHAIRMAN PERATA: Yes. I don't want to go look
15 it up. I've got it in my notes, but I can't remember either.
16 It's been a long time ago.

17 MS. FISHER: What is Title 15. You mean actually
18 what it is as far as the document?

19 It is, you know, honestly it's funny I don't know
20 how to describe -- I don't how to answer that question.

21 Title 15 is the part of the Penal Code that we
22 use to make our decisions.

23 CHAIRMAN PERATA: I guess the question I have is,
24 I'm a little confused about the special assignment and what it
25 is that you're doing.

26 My bias here is that this whole parole process
27 seems to be a lot of get up in the morning and make it up as you
28 go along. The system looks like it just sucks. A technical

1 term.

2 I really appreciate that a lot of you are trying
3 to bring order out of things that don't make a lot of sense from
4 this side. Maybe after you've been there for a while, it does
5 on your side.

6 Having said that, this looks a little bit like,
7 "I've got an idea. Pursue it."

8 And then the question becomes, in my business I
9 call that cowboying. I just I don't know exactly what I'm
10 asking here, but it troubles me a little bit that, you know, a
11 couple of individuals are given a special assignment to go out
12 and try to figure something out. It's just troubling.

13 How does this happen?

14 MS. FISHER: Well, the only thing I can tell you
15 is that there was a committee formed at the board. And that
16 they were looking at different ideas related to ways to work --
17 work to help to clear the backlog.

18 One of the things -- there were a lot of ideas
19 thrown around. And I think maybe Mr. Wattley was the gentleman
20 who mentioned that there was some discussion among those people
21 about possibly doing a prehearing conference with inmates, and
22 having perhaps a deputy commissioner talk to inmates ahead of
23 time.

24 And I don't even -- I don't think that that was
25 ever pursued, but one of the things that we looked at was
26 whether or not we've heard -- you know, we hear periodically
27 that some of the hearing go very long. Some of them may not
28 need to go as long as they do.

1 What I was asked, the conversation that I was
2 involved in and was asked to look at, was whether or not we're
3 doing things in hearings just because it's what we've always
4 done, as opposed to whether or not it's practical.

5 And so, we didn't do it in a vacuum. We came
6 back and we talked with legal staff about, you know, what we
7 believed we were finding.

8 One of the things that was asked of us to do in
9 the beginning was, when we went to prisons, particularly where
10 the inmates -- and we did sort of target institutions where --
11 like Pelican Bay, it's a Level Four, and Corcoran, things like
12 that. We were asked to go in and ask the inmate, "Are you here
13 today because you believe you're suitable for parole, or are you
14 here today because you'd like for us to give you some
15 direction?"

16 And there was a thought that some of the inmates
17 might be there feeling that they weren't yet suitable for
18 parole, but that they were looking for the board to give them
19 some direction as to what we felt that they should do to be
20 suitable for parole.

21 So, like I said, I was asked if I would take it
22 on, and I said that I would.

23 CHAIRMAN PERATA: It feels a little bit like pick
24 up basketball, no offense.

25 So, you got selected. So, you and some other
26 person now have been trying to figure out -- how have you been
27 going about doing it?

28 I've got to tell you, I find this fascinating.

1 MS. FISHER: As I said, one of the attorneys gave
2 us a script that was essentially -- it covered all the areas
3 that we need to cover by law, but it was worded a little
4 differently. It started out at the beginning with the question,
5 you know: Let's talk about why we're here, and if you're
6 interested in --

7 CHAIRMAN PERATA: I'm just trying to get this
8 clear. There's you, and there's this other person.

9 So, are you barnstorming the state, going around
10 trying to figure stuff out?

11 MS. FISHER: We had --

12 CHAIRMAN PERATA: It sounds like what you're
13 trying to do probably has some value, but it sounds like kind of
14 a weird way to go about it.

15 MS. FISHER: And it may be. I think that we were
16 just looking for, you know, ideas, and this was one that was
17 thrown out.

18 What we did initially, in talking with the -- our
19 attorneys at the office was, when we talked about this idea,
20 there was a discussion about how best to try it out. How best
21 to go out and see if there were things that we were doing that
22 were not correct.

23 CHAIRMAN PERATA: Now, when you talked to the
24 lawyers, was that for the purpose of -- for what purpose? Why
25 did you talk to the lawyers?

26 MS. FISHER: They were the ones who were talking
27 about trying this.

28 CHAIRMAN PERATA: So, they initiated it?

1 MS. FISHER: Yes. So what I was looking for was
2 how do you want us to do this? What do you want us to --

3 CHAIRMAN PERATA: Normally are you given
4 direction by lawyers?

5 You don't work for the lawyers. You work for the
6 Governor.

7 MS. FISHER: Right.

8 CHAIRMAN PERATA: Do you see why I'm confused?
9 Just say yes. It's a lot easier.

10 MS. FISHER: Yes, I guess I do. I just don't
11 know how --

12 SENATOR BATTIN: Can I interject here?

13 The lawyers told you what you had to make sure
14 you said and how you said it so that you would follow the
15 procedures of the board and make sure that the inmates had their
16 due process, and you were following the law.

17 MS. FISHER: Right.

18 SENATOR BATTIN: It's not subjective.

19 MS. FISHER: Right.

20 SENATOR BATTIN: You had to do this and that.

21 CHAIRMAN PERATA: They were concerned for due
22 process? That's what initiated this?

23 MS. FISHER: No. I think that what they were
24 looking at was whether or not in some cases we were doing very
25 extended hearings, and --

26 CHAIRMAN PERATA: Were they getting tired? What
27 was the nature of their concern? I don't get it.

28 MS. FISHER: It was -- it was related to how many

1 hearings the commissioners could do in a day, and whether or not
2 in some cases our hearings were longer than necessary.

3 CHAIRMAN PERATA: This is, in all due respect,
4 this is a very strange position for a lawyer to take.

5 This is an administrative concern that ought to
6 be coming out of the Governor's Office. If there's no better
7 supervision than that, we should be looking at it. This is a
8 little alarming.

9 I don't have a law degree, either, and I don't
10 practice, but I do know this. I know enough about policy and
11 procedure and administrative responsibility to know that that
12 ain't normally the way it happens.

13 As long as I've already invoked the Inspector
14 General for one thing, I'd like to have him take a look at that,
15 too.

16 This is not directed at you, but there's just
17 something inherently wrong with a system that has been thus
18 described.

19 And it sounds to me like, you know, you've been
20 put in a position that's a little untenable because you're sort
21 of: is it a telephone or a phone book?

22 SENATOR BATTIN: These are in super max
23 facilities. These are Level Four-Level Five facilities that you
24 were doing this in?

25 MS. FISHER: Primarily, yes.

26 SENATOR BATTIN: Just to get there, you have to
27 be --

28 CHAIRMAN PERATA: No, no, no. It's got nothing

1 to do with who they're doing. This is just procedural.

2 I don't give a damn if it's a Level One, whatever
3 the freak that is, or a Level Five.

4 I am concerned about having people who don't have
5 that kind of an authority telling people what they ought to go
6 about doing. She's a political appointee of the Governor, and
7 no lawyer ought to be telling you how to improve the system.
8 That's an administrative responsibility, and the Governor has
9 the responsibility for that, or his people.

10 And I just want to find out what the hell.

11 SENATOR BATTIN: I was reading your questions
12 differently.

13 SENATOR ASHBURN: Can I try on the same subject?

14 CHAIRMAN PERATA: Go ahead.

15 SENATOR ASHBURN: Because this Rules Committee
16 has dealt with these issues before, we've dealt with the issue
17 of psychiatric evaluations, and whether they're timely, whether
18 they're valuable, whether they're consistent, whether they're
19 useful.

20 We also have dealt with the backlog, how to move
21 that along. We've dealt with these questions when it was the
22 confirmation of individual commissioners. We've dealt with it
23 in the context of the executive officer for the commission.

24 So, I'm just saying that the same issue that
25 you're raising about some of the procedures used by the
26 commission have come here as questions to this Committee.

27 So, I don't have a problem with the fact that
28 you're looking at ways to do things differently or better.

1 The question would be, your role. You're the
2 chairwoman of the commission. What do you believe is your
3 responsibility on behalf of the entire commission in examining
4 new methods and procedures to be implemented or rejected for the
5 future work of the commission?

6 MS. FISHER: Well, I certainly believe that as
7 someone who's out doing hearings, I probably have a different
8 perspective than people who were in the office and didn't ever
9 do hearings.

10 SENATOR ASHBURN: That's not what I'm asking.

11 MS. FISHER: I'm sorry. I misunderstood.

12 SENATOR ASHBURN: You are a hearing officer, but
13 you also have a different title. You are the chairperson.

14 What does that mean in your responsibility on
15 behalf of all the other commissioners in the administrative
16 functions of the board?

17 MS. FISHER: Currently it means that I am the
18 person who chairs the meetings, and not much more under the
19 reorganization.

20 SENATOR ASHBURN: What do you believe your role
21 is to the executive officer?

22 MS. FISHER: I try to bring issues to the
23 executive officer that I see in the field as a working
24 commissioner.

25 SENATOR ASHBURN: Does the committee that you
26 described, the two-person committee, is that under the auspices
27 of the executive officer?

28 MS. FISHER: I guess that it would be, sure.

1 SENATOR ASHBURN: In what way did you communicate
2 that?

3 MS. FISHER: Right now, today?

4 SENATOR ASHBURN: No. Did the executive
5 officer --

6 MS. FISHER: It was under the --

7 SENATOR ASHBURN: -- consult with you, assign
8 you? Did you ask to be assigned to a two-person committee?

9 MS. FISHER: It was under the former executive
10 officer, and it was in discussions with the people who were
11 working on looking at solutions related to Rutherford, and in
12 discussions with them and with the executive officer, yes.

13 SENATOR ASHBURN: Do you have a proposed work
14 product from this committee?

15 MS. FISHER: I don't necessarily have a work
16 product related to the hearings because ultimately all we did
17 is, we tried the changes that were suggested by our attorney,
18 and looked at also other issues that made the day long.

19 Now, I do have a work product related to findings
20 as to what things were that were making our work day difficult.
21 It was my feeling that it was not as much about what the
22 commissioners were doing at hearings as it was in what we were
23 encountering in the institutions.

24 SENATOR ASHBURN: How would you characterize the
25 relationship between the commission, your role as chair, and
26 your executive officer currently?

27 MS. FISHER: We are the hearing officers. We are
28 the policy makers. We have a much -- because we are rarely in

1 the office, and we're out on the road at remote locations most
2 of the time, we don't have a very -- we don't have a great deal
3 of communication available to us.

4 SENATOR ASHBURN: How often does the full
5 commission meet?

6 MS. FISHER: Once a month.

7 SENATOR ASHBURN: And the executive officer is
8 there?

9 MS. FISHER: Right.

10 SENATOR ASHBURN: Part of what you do is to deal
11 with hearings and individual cases, but it also is to deal with
12 administrative matters?

13 MS. FISHER: Right.

14 SENATOR ASHBURN: The role of these attorneys in
15 coming up with language to be used in a format, was that
16 solicited from the attorneys? For example, this two-person
17 committee that you established, did you solicit from the
18 attorneys, "We see this out there. How could we do it
19 otherwise," and they gave you a response? Or did they come you
20 and say, "You know, maybe there's a better way, and here's our
21 suggestion?"

22 MS. FISHER: It was a combination of both. There
23 were discussions, as I said, about perhaps doing a preconference
24 hearing. And there was discussion just in general about how we
25 conduct the hearings currently and had in the past, and whether
26 or not some of the hearings were more protracted than they
27 needed to be.

28 SENATOR ASHBURN: Do you think that the attorneys

1 for the Board of Prison Terms work for you or for the executive
2 officer?

3 MS. FISHER: It's my understanding that under the
4 reorganization, they work -- they work for CDCF, but they report
5 to the executive officer.

6 SENATOR ASHBURN: Do you believe that your board
7 has administrative oversight over the activities of the
8 executive officer?

9 MS. FISHER: Yes.

10 SENATOR ASHBURN: So therefore, as chairwoman of
11 the board, you have an extraordinary role.

12 I mean, I'm trying to figure out if you run that
13 person, or that person runs you?

14 MS. FISHER: Are you talking about the attorney?

15 SENATOR ASHBURN: No, the executive officer, but
16 by extension the attorneys. But I'm referring to the executive
17 officer and yourself.

18 MS. FISHER: Well --

19 SENATOR ASHBURN: And that's the executive
20 officer; you're the chairperson.

21 MS. FISHER: And I've asked for clarification.

22 SENATOR ASHBURN: Who's reporting to whom here?

23 MS. FISHER: I've asked for clarification about
24 that. And it's my understanding from what I have been told is
25 that the executive officer works for the board, the board as a
26 whole.

27 SENATOR ASHBURN: And if you decided to terminate
28 the executive officer for cause, you believe that you, as

1 chairperson and your fellow commissioners have the authority to
2 do that?

3 Have you ever asked these questions?

4 MS. FISHER: Yes, I have. Yeah, I have.

5 SENATOR ASHBURN: Then why can't you give me the
6 answers?

7 MS. FISHER: Because I haven't gotten all of the
8 answers.

9 SENATOR ASHBURN: And you've been there how long?

10 MS. FISHER: As chair, just for a few months.

11 SENATOR ASHBURN: Honestly, I can't conceive of
12 serving in your capacity for one hour without knowing what my
13 authority is.

14 MS. FISHER: And I've attempted --

15 SENATOR ASHBURN: Nor would I have accepted the
16 job.

17 MS. FISHER: I've attempted to get answers to
18 those questions.

19 CHAIRMAN PERATA: Just a point of information.

20 Under the reorganization,

21 "The executive officer shall be
22 the administrative head of the
23 board and shall exercise all
24 duties and functions necessary
25 to ensure that the
26 responsibilities of the board
27 are successfully discharged."

28 The Governor may appoint the executive officer of

1 the board subject to Senate confirmation.

2 So, he works for the Governor.

3 MS. FISHER: He is the Governor's appointee,
4 exactly.

5 SENATOR BATTIN: She couldn't fire him.

6 SENATOR ASHBURN: Which is contrary to the answer
7 that you just gave, which says to me that you don't know your
8 relationship to your executive officer, which I find very
9 troubling.

10 MS. FISHER: And I have been having discussions
11 to try to clarify because I was unsure. And I've talked with
12 people from the Governor's Office in meetings recently to find
13 out exactly what it is that they do want from us, and what they
14 do want from the executive officer, and what our relationship
15 should be.

16 SENATOR ASHBURN: Just to wrap up. I don't want
17 to prolong.

18 I commend the commissioners, the members of this
19 Board of Prison Terms, for wanting to find a better way to
20 conduct the hearings and to give to those who are up for review
21 the fairest opportunity possible. So, I mean, I think it's
22 commendable that people are looking at ways of improving.

23 But there ought to be a format for that. And
24 somebody ought to be in charge of it. And there ought to be
25 lines of authority for it. There ought to be timelines for the
26 work product. There ought to be deliverables along the
27 timeline, and I don't hear that. And it's troubling to me.

28 And again, as chairperson of the board, you have

1 a different role. You are the spokesperson, the chosen among
2 the commissioners in that responsibility.

3 Thank you.

4 CHAIRMAN PERATA: This is a little perplexing.
5 Here we've got two guys that came out of the Marine Corps that
6 are used to great structure, and chain of command, and I feel
7 like you've all been just dropped into a pot of soup.

8 I just think it's a very unfair position to be
9 putting people in, that they're sort of playing pick up.

10 SENATOR BATTIN: We have had a completely
11 reorganized system here. They've changed everything. They
12 changed the board.

13 CHAIRMAN PERATA: I'm not faulting Ms. Fisher.

14 SENATOR BATTIN: They're dropped into this, and
15 we're going to have to struggle through until everybody does
16 understand what their roles are.

17 CHAIRMAN PERATA: Except this position is very
18 important if you happen to be out there waiting to be paroled.

19 Sorting this stuff out is, I don't think we've
20 got that luxury.

21 Anybody here in support of Ms. Fisher?

22 Welcome.

23 MR. RICO: Thank you. My name is Ron Rico, and
24 I'm a deputy district attorney with Santa Clara County District
25 Attorney's Office.

26 I'm here -- I came to observe today. I've never
27 been to one of these before.

28 And with all due respect to the panel, I feel

1 much more comfortable in front of a jury, in front of someone in
2 a courtroom, because this is a different setting.

3 It was not my intention to speak today, but I've
4 heard a lot of things, and some of them troubled me.

5 I've been a deputy district attorney for 27 years
6 now. I've been a citizen of the county for a lot longer than
7 that, and I kind of speak as an observer, a citizen of the state
8 who has, perhaps, some specific knowledge because of personal
9 experience given what I've done.

10 I worked homicide in our office for ten years.
11 The last three years I've been doing the lifer hearings for our
12 office.

13 It's been my experience that they're entirely
14 different. It's an entirely different arena, so to speak, than
15 the courtrooms. I'm used to being in a courtroom where you've
16 got a judge that presides. You have a prosecutor; you have a
17 defense attorney. There are rules.

18 And the parole hearings are a whole different
19 thing. For example, the representative from the DA's office is
20 not a party to the proceedings but basically an invited guest.
21 And I've kind of adopted over the years as to how I handle the
22 hearings.

23 What I do, and I think it's important to mention
24 because it pertains to why everyone's here today. What I do, I
25 get the prison packet, which have, you know, some facts of the
26 crime. They have the probation report and very little
27 information about the life crime that got someone there. Then
28 there's the board report, there's the psych evals. Some of them

1 are old, you know. That seems to be getting better in my
2 experience. They seem to be updating.

3 But I've kind of developed as to how I do these
4 things. I know that I am a prosecutor by vocation, but I do my
5 damndest when I go into these hearings to fully review the case
6 itself. And there are some, I have to admit, that I review the
7 facts, and I think, given this particular life crime, and I'm
8 thinking of one from last week where this individual who worked
9 with a woman and knew her and her husband socially, and was
10 leaving the area, had invited the woman over and said, "Gee, you
11 know, come over. We'll have dinner," and invited the husband,
12 too. The husband declined. It was a going away thing.

13 The woman goes over there, and something
14 happens. Only the male and the woman who turned out being the
15 victim know what happened, but the bottom line is that he
16 strangled her. He disarticulated her body, not just
17 dismembered, cut it into parts and pieces like so much meat, put
18 it in trash bags, loaded it in the trunk of the car and set off.

19 And he has done nothing wrong in prison for the
20 last 20-some years, and is indicating in current reports, "I
21 just don't know what happened that night. You know, it was one
22 of those situational things, but whatever it was, it's gone."

23 Where does it go to? When I look at cases, and I
24 said there's something there. That doesn't just go away. The
25 psych evals say that he is no greater risk than your average
26 citizen in the community.

27 Well, I don't know where this came from, or where
28 it went to, but I wouldn't ask him over to dinner.

1 That's the kind of situation that you're dealing
2 with.

3 What I see my role is, is to review thoroughly
4 the facts of the case, because quite often, the commissioners
5 are presented with the fact that somebody has been disciplinary
6 free for a number of years, and everything's been good. They
7 have performed the Heimlich maneuver on a correctional officer,
8 saving his life, and nobody seems to want to talk about the
9 crime.

10 And in this particular case I tracked down the
11 husband of the victim, who hadn't been notified through the
12 system that this was coming up. He was living in fear because
13 he thought a few years ago, as he was walking down the street,
14 he saw the guy that had killed his wife driving by, looking at
15 him. It turned out that the inmate was still in, but he didn't
16 know that. So I found him, and we were going to bring him in
17 and do the hearing.

18 Those are the kinds of cases.

19 The reason I come up here to speak, when it was
20 not my intention in doing that, coming into the system, you
21 know, I have seen a lot of things that I think, you know, are
22 worthy of improvement. Things don't always run smoothly. I
23 think that's a given, and that's probably why there's the
24 reorganization system or reorganization plan that's going on
25 now.

26 But I guess as I was sitting here today, I was
27 hearing -- and it was when Mr. Farmer came up to speak. There
28 were individuals that lined up in opposition. And I was

1 thinking, you know, even though I'm a DA, I try my damndest to
2 go in with an open mind. I review the file. I know what the
3 facts of the life crime are. I want questions to be answered
4 about, well, how do you deal with this? You're going to get out
5 into a stressful world that is 25 years more advanced than what
6 you remember. How are you going to deal with problems?

7 What I was sensing today, this is kind of a
8 little bit like walking into a strange wedding, where you've got
9 the groom's side, and you've got the bride's side, and you don't
10 know what side to sit on.

11 What I'm trying to do, I guess, is to be here on
12 the side of fairness, on the side of, if I, a DA for 27 years,
13 can go into a case and try to not make up my mind until I have
14 heard everything, I want to see the inmate. I want to look him
15 in the eyes. I want to watch them when they react to questions.
16 I want to be able to gauge whether or not they're just mouthing
17 the words, because there are organizations in prison, like the
18 Oak Fellows and others, where lifers get together, and they
19 practice how to respond. Oh, you know, well, the commissioners,
20 they like this. They like to hear remorse. They like to hear
21 this. So, there's lot of rote recitation of buzz words.

22 And I like to see if there's a way that I can
23 sense to somehow sort it out, whether it's real or not.

24 I've done hearings in front of everybody who's
25 been in this room today, as well as a lot of other
26 commissioners, including some that are no longer members of the
27 board. And hearings, sometimes it's a matter of style, the
28 different commissioners. Sometimes, with all due respect, it's

1 a matter of competence. Sometimes it's a matter of, perhaps,
2 the commissioners not being lawyers or judges when confronted by
3 somebody on either side, either prosecution or defense, saying,
4 "Well gee, you know, we can get a writ of habeus corpus; we can
5 do this."

6 Maybe they don't quite know if they, you know,
7 should stand by what they believe to be right in the face of
8 this inference about there being a legal challenge. That's what
9 they're dealing with.

10 I've been in hearings that have gone forever,
11 five-hour hearings, that there's no reason for them to be
12 five-hour hearings. And I sit there, and I wish I'd brought a
13 book, and I could hold it under the table.

14 CHAIRMAN PERATA: So do we.

15 MR. RICO: But I have to say that I have seen
16 Commissioner Fisher do hearings. I know that she has a
17 background that perhaps would incur the wrath of some because
18 she has a background dealing with victims.

19 Victims are not to be forgotten, but they're not
20 all -- they're not the only thing. You need to consider all of
21 the facts.

22 And what I have seen with her in her hearings is
23 that she, like she said a little while ago, everything I've seen
24 suggests to me that she is open-minded and will consider
25 everything, and doesn't make her mind up in advance. And I
26 think that's what it's all about.

27 And I couldn't sit back there any longer and wait
28 for, you know, a line of people to come up and say this and

1 that.

2 Not too long ago, the executive board meeting
3 last month, there was a case that I had argued in opposition to
4 parole. Commissioner Fisher and the deputy commissioner gave
5 him a date, and it was on the executive board meeting. And I
6 couldn't be there; I wrote a letter in opposition, you know.

7 The board put the stamp of approval on it. She
8 and I don't always agree.

9 I'm not here because, you know, she's in my
10 pocket or anything like that. I'm here as a matter of fairness.
11 She does a good job. She's in a situation where the agency, the
12 organization she's working for, and the guidelines under it, is
13 perhaps in a state of flux that it would be nice to have
14 resolved, but that doesn't fall on her lap.

15 CHAIRMAN PERATA: Appreciate that.

16 MR. RICO: I was just here to say those words.

17 I would ask that all of the Members of the panel
18 do what I try to do, and that's to remain open-minded, and in
19 fairness, do the right thing. I think the right thing is
20 confirming her.

21 Thank you.

22 CHAIRMAN PERATA: Thank you, sir.

23 Anyone further?

24 Anybody here in opposition? Please come forward.

25 MS. BUCHALTER: For the reporter, Linda
26 Buchalter, lawyer.

27 I made some notes during this conversation that I
28 want to share with you.

1 When Commissioner Fisher was asked who pays the
2 lawyers, who does the lawyer work for, I want to point out the
3 difference in who pays them and who they work for. She didn't
4 seem to be able to answer the question.

5 Regardless of who pays the lawyers, there are
6 state-paid attorneys. There are also privately paid attorneys.
7 The lawyer works for the client, the inmate. That's who the
8 lawyer works for, just for clarification.

9 I've submitted letters of opposition to you that
10 I understand you may have been briefed about. There's probably
11 more than one letter. I also opposed last time.

12 The word "alarming" was used here by one of the
13 Senators. It is alarming because after listening to the
14 district attorney, and knowing that Susan Fisher is a very
15 strong crime victims advocate, in fact I was rather appalled to
16 see a new program, I guess you would call it, formed by the
17 Governor, which is a crime victims services program, I believe.
18 And Susan Fisher's name was right at the top.

19 I find that to be -- it certainly has the
20 appearance of conflict, which should not be in this kind of a
21 forum with -- we are all citizens of society, but I call my
22 clients, who are the inmates, society's least favored citizens.
23 They definitely need your help and your concern to help them go
24 home, because the law mandates that they have second chance if
25 they are no longer a danger to society and have paid their debt,
26 which is a severe punishment of time in prison.

27 I believe that the recent rash of victims showing
28 up where they have never showed up before, I can't prove it, and

1 I certainly don't know, but it seems to me that the district
2 attorney and perhaps Susan Fisher or her constituents are in
3 league, and suddenly I have had victims turn up, or victims next
4 of kin turn up at my hearings, and they said, "Oh, we just found
5 out about this."

6 I certainly approve of their right to appear, but
7 I would not approve of anyone involved with the board, or in
8 league with the district attorney having any hand in that. I
9 don't know that that's the case, but it is very suspicious to
10 me.

11 SENATOR CEDILLO: Can you tell me why that would
12 be inappropriate? There's two questions that I have.

13 One is on this assertion of a conflict of
14 interest, where there's a distinct view of what the conflict is.

15 The second is the inappropriateness. You're
16 asserting that it's inappropriate. Just tell me why.

17 First the conflict, then she has a different view
18 as it relates to victims, and how that becomes a conflict.

19 Then the second question is the presence of
20 victims at these hearings, and why it's inappropriate for them
21 to get notice and opportunity to participate?

22 MS. BUCHALTER: It is not in appropriate. Are
23 you asking me that question, to clarify?

24 SENATOR CEDILLO: I am asking that question.

25 MS. BUCHALTER: It is not inappropriate for them
26 to appear. In fact, I would support the law that says they have
27 that right because, of course, they are the ones who've suffered
28 greatly, more than anybody, as a matter of fact.

1 But I don't think it would be appropriate for any
2 member of the board to be behind the district attorney suddenly
3 turning up and contacting all the victims to make sure that they
4 do make an appearance at the hearing, because historically, and
5 other lawyers in my position I'm sure --

6 SENATOR BATTIN: Is that an established fact,
7 that she has, or is that just your --

8 MS. BUCHALTER: No, I've made it clear.

9 SENATOR CEDILLO: I'm going on my question, as to
10 the inappropriateness of that circumstance.

11 MS. BUCHALTER: I made it clear that I don't
12 know. But there has been a rash of that, and I just -- there's
13 somehow some crime victims advocacy going on that I just hope
14 the board doesn't have a hand in it, that's all.

15 You talked a lot about --

16 SENATOR CEDILLO: Why is that inappropriate then?

17 MS. BUCHALTER: Why is it inappropriate? To me
18 it would be a conflict of interest if any board member were to
19 go out and ask a district attorney to please bring a victim's
20 next of kin, or victims themselves, to the hearing. I don't see
21 how that's not a conflict, Senator.

22 SENATOR CEDILLO: Walk me through that.

23 MS. BUCHALTER: Because their position should be
24 fair, unbiased, neutral because they have a great judgment call
25 to make, weighing the safety of society to the needs and the law
26 that operates for inmates' right to go home.

27 SENATOR CEDILLO: I'm not arguing with you, but
28 it just seems to me there's this function here. You just said

1 you don't have a problem with the rights of victims to be there.

2 MS. BUCHALTER: That's correct.

3 SENATOR CEDILLO: So then the question is,
4 administratively, how do they get there? How do they know?

5 Then your position is that however they get
6 there, how they know, it is inappropriate for the board to
7 provide them that notice.

8 MS. BUCHALTER: To drum them up, yes. I can't
9 see how that would be appropriate. It would certainly seem a
10 conflict to me.

11 SENATOR BATTIN: I guess maybe I'll ask it the
12 other way around.

13 Why is it inappropriate?

14 MS. BUCHALTER: Why is it inappropriate? Because
15 the board should be a fair and impartial board, giving fair and
16 impartial hearings to inmates who are in that position. And for
17 them to have a side motive or agenda to be sure that victims or
18 victim's next of kin attend, I don't believe should be in the
19 purview of their function as objective observers, objective
20 judges of the dangerousness of inmates who are asking to be
21 returned to the community. That is not their function because
22 victims --

23 SENATOR BATTIN: So the victim's family, you
24 think, is prejudicial to the inmate's parole chances?

25 MS. BUCHALTER: I do.

26 SENATOR BATTIN: Senator Cedillo, I didn't mean
27 to interrupt you.

28 SENATOR CEDILLO: I think we got it. I'll leave

1 it at that.

2 SENATOR ASHBURN: I want to clarify.

3 SENATOR CEDILLO: There was a previous question,
4 though, on the conflict.

5 SENATOR ASHBURN: Can I clarify on the last
6 point?

7 Are you alleging that Ms. Fisher inappropriately
8 contacts members of the victim's families, or the district
9 attorneys, that they be present at these hearings?

10 MS. BUCHALTER: No.

11 SENATOR ASHBURN: Then why are we engaged in this
12 conversation? Does she do it or does she not do it?

13 MS. BUCHALTER: I do not know.

14 SENATOR ASHBURN: Whether it's appropriate or not
15 is a secondary issue that I guess we could each have our own
16 view on.

17 MS. BUCHALTER: Right.

18 SENATOR ASHBURN: So why did you raise that?

19 MS. BUCHALTER: I raised it because suddenly at
20 my hearings, victims and victims next of kin will say, "Oh, we
21 just learned about this."

22 SENATOR ASHBURN: Do those only happen at
23 Ms. Fisher's hearings?

24 MS. BUCHALTER: No. This would be --

25 SENATOR ASHBURN: Are you alleging that she has
26 done this or not?

27 MS. BUCHALTER: I'm alleging that --

28 SENATOR ASHBURN: We're here for her

1 confirmation.

2 MS. BUCHALTER: I understand. I'm alleging that
3 suddenly it is suspicious. That is all I'm alleging.

4 But I want -- I have other things I would like to
5 respond to.

6 SENATOR ASHBURN: That's not a real high
7 standard.

8 MS. BUCHALTER: It's not, is it. I agree.

9 SENATOR ASHBURN: Thanks.

10 SENATOR BATTIN: In the letter you sent to the
11 Committee, you used some very strong language:

12 "I have appeared before
13 Commissioner Susan Fisher on
14 many occasions and am shocked
15 always by her ignorance, her
16 bias, her disregard of the laws
17 that govern such hearings and her
18 extremely unjustified decisions."

19 You talk in the letter that you sent on March
20 4th, it's the third paragraph in your letter, you're talking
21 about a case where the parole was denied.

22 What struck me is your argument here:

23 "... during her denial recitation,
24 made an order that trail testimony
25 of a psychologist be investigated
26 as to his assertions that there
27 may have been suffocation in the
28 child torture matter."

1 What are the details of this case?

2 MS. BUCHALTER: The details of this case are, my
3 client is convicted of child torture based on the fact that he
4 and his wife had a belief that -- they were very deeply
5 religious, you spare the rod, you spoil the child. And they
6 certainly went overboard to where it elevated to the crime of
7 torture. And they were, in fact, convicted of the crime of
8 torture.

9 So, I felt it was very --

10 SENATOR BATTIN: What exactly did your client do
11 to the child?

12 MS. BUCHALTER: They struck -- they struck the
13 child sufficiently.

14 The child was also left in a tub of water where
15 the child became scalded when the parents were called away to a
16 telephone or for some other emergency.

17 SENATOR BATTIN: In the hearing that he was
18 convicted for this, I believe he said that the child scalded --
19 him or her?

20 MS. BUCHALTER: Her, it's a little girl.

21 SENATOR BATTIN: Herself. And that somehow the
22 three-year-old child somehow was responsible for scalding
23 herself, and would not at the time take the blame, or admit
24 responsibility for doing that.

25 Am I mistaken in that?

26 MS. BUCHALTER: I think so, because we are not
27 there to retry the case.

28 SENATOR BATTIN: I'm here asking you questions.

1 MS. BUCHALTER: Yes.

2 SENATOR BATTIN: Am I mistaken in that? Is that
3 what he said, that he said, "Well, we were distracted. We had a
4 phone call." So the little girl somehow, a three-year-old girl
5 somehow scalded herself, got herself under scalding hot water,
6 and sufficiently enough to get third degree burns. And it was
7 her fault?

8 MS. BUCHALTER: No.

9 SENATOR BATTIN: He didn't take the blame for
10 that? Denied that he did that?

11 MS. BUCHALTER: No, he's convicted for child
12 torture, regardless of the torture.

13 SENATOR BATTIN: For hitting her, he said; right?

14 MS. BUCHALTER: Regardless of the torture. What?

15 SENATOR BATTIN: For hitting her.

16 MS. BUCHALTER: Also.

17 SENATOR BATTIN: So, in the hearing that you're
18 apparently aggravated or mad enough to put it in writing to our
19 Committee, you're saying that in that, when she revoked the
20 child torturer's parole, that she cited the fact that the little
21 girl was suffocated.

22 And if I'm to understand this case correctly as
23 well, the little girl suffered mental harm through that
24 suffocation as well.

25 And you don't think that she should look back at
26 that as a predictor of maybe future actions, or to think that a
27 person who was sentenced to prison for torturing a child,
28 striking them, scalding and then choking them, she shouldn't

1 look back at the facts of the case to see whether or not he was
2 fit to be returned to society?

3 MS. BUCHALTER: That is not a function of the
4 board, Senator, because the function of the board is not to
5 retry the case, or to drum up new facts, or to go outside the
6 conviction of the court, the findings of the court.

7 SENATOR BATTIN: So, you're saying that Charles
8 Manson, if he was the model prisoner, should be paroled?

9 MS. BUCHALTER: I'm not his judge.

10 SENATOR BATTIN: Now come on. Because we can't
11 look back at the facts of the case?

12 MS. BUCHALTER: Yes, they do examine the facts of
13 the case. However, you cannot --

14 SENATOR BATTIN: So those are not relevant?

15 MS. BUCHALTER: No, not drumming up new facts.
16 Not trying to --

17 SENATOR BATTIN: That's a new fact, that she was
18 suffocated when she was tortured?

19 MS. BUCHALTER: That was not a part of the
20 conviction.

21 SENATOR CEDILLO: Your point is, that was not a
22 factor in the case; right?

23 SENATOR BATTIN: That was in evidence in the
24 case.

25 MS. BUCHALTER: No, it wasn't.

26 CHAIRMAN PERATA: I think I understand the gist
27 of the question.

28 Anything further?

1 Thank you, ma'am.

2 MS. BUCHALTER: May I add some more? May I
3 continue?

4 CHAIRMAN PERATA: Briefly. You drove a long way.
5 I remember you said that.

6 MS. BUCHALTER: Yes, I did, thank you.

7 Also, the lawyers -- I don't know who the lawyers
8 were, but the scheme that was about are inmates suitable for
9 parole, or are they looking for direction, I'm not one of those
10 lawyers that participated in that sort of thing. And I don't
11 know of any lawyer that did. I'm wondering who those lawyers
12 are because --

13 CHAIRMAN PERATA: What we're really looking at is
14 Ms. Fisher.

15 MS. BUCHALTER: I understand.

16 CHAIRMAN PERATA: The rest of this stuff, as you
17 say in your business, is hearsay.

18 MS. BUCHALTER: Yes, all right.

19 But I do believe that her crime victim advocacy
20 status, I think, precludes her from being a fair and impartial
21 person.

22 I've witnessed her questioning in the hearings.
23 I've witnessed her asking for the district attorney to provide
24 me with a stack of documents about this high on the
25 investigation of suffocation, which is not relevant to anything,
26 as a matter of fact, in terms of his suitability -- current
27 suitability for parole.

28 I found that to be a waste of taxpayers' money

1 and unnecessary. It's nothing that can really be used in the --
2 because it was nothing more than a district attorney or a trial
3 testimony of a doctor. It had nothing to do with the conviction
4 per se.

5 Also, I believe the bias was exhibited here today
6 when I heard Commissioner Fisher state to this panel those in
7 Pelican Bay are a different sort of animal. And I want to close
8 on that. They're not animals. I oppose.

9 CHAIRMAN PERATA: Thank you.

10 Yes, sir.

11 SENATOR ASHBURN: Is that in the transcript? Do
12 you have a way to go back to that? I didn't hear that.

13 MS. FISHER: And, you know, the minute it came
14 out of my mouth, I was talking about like an animal of a
15 different stripe, the saying.

16 CHAIRMAN PERATA: I know. I frequently say
17 things that I wish I could erase, too.

18 Yes, sir.

19 MR. CHANDLER: My name's Keith Chandler, as I
20 testified to earlier. I'm a former life prisoner and have
21 extensive experience with the board work for a law firm that
22 does represent prisoners in hearings on some occasions.

23 When I testified about a year ago when Ms. Fisher
24 was up for confirmation the first time, I believe the first
25 things I said was that studying her background, she seems to be
26 intelligent, articulate, and competent to do a lot of jobs in
27 public service.

28 My opposition to her at that time was the clear

1 appearance of unfairness of appointing someone who has been an
2 advocate for essentially one side of the dispute.

3 And earlier during the Committee hearing, we
4 talked about the fact that the Board of Prison Terms -- Board of
5 Parole Hearings now is kind of like the poor stepchild of the
6 justice system. And I think that was a very good point. I
7 can't remember which Senator made it, but it was a good point.

8 CHAIRMAN PERATA: If it was a good point, it was
9 probably me. Can you call that back?

10 [Laughter.]

11 MR. CHANDLER: What I wanted to point out was
12 these people are members of the justice system, our justice
13 system that is, for all of its faults, reknown around the world
14 as the best one.

15 And I think that we need to put this into a clear
16 perspective from legal standpoint. I work in a law firm. I'm
17 familiar with the law. I know some of the Members may be
18 attorneys.

19 If you go into court as a criminal attorney, and
20 I'm not one. I'm a legal assistant, but if you go into court as
21 a criminal attorney, and you want to disqualify a judge, you
22 don't have to prove bias. It's the appearance of bias that
23 allows us to disqualify a judge from a criminal proceedings.
24 It's not bias.

25 I don't have to prove Ms. Fisher's biased. Her
26 background proves she's biased. And that's the problem. She
27 could never sit as a judge in a criminal case. No criminal
28 defense attorney would ever let her sit on a jury with her

1 background and history.

2 And yet we're talking -- first we've appointed
3 her to this board that solely judges people who she used to
4 advocate should never get out of prison, and now we're trying to
5 talk again about appointing her to be the chairperson.

6 To a number of people who are trying to look at
7 this, and I think I want to specifically speak for myself here.
8 I don't want to speak for others. There have been two people
9 who have been confirmed today who, myself as a former inmate,
10 did not oppose, and because they brought diversity and lack of
11 apparent bias to this board.

12 This board is broken. A number of the Senators
13 questioned Ms. Fisher. I don't think she even knows who's in
14 charge. There's a reason for that. It's institutional built-in
15 bias. It's a political appointed job. As crime victims have
16 become more empowered, the governors, in response to their
17 massive amount of money that they can raise and power that they
18 bring to the table, have become responsive to that and appointed
19 more and more and more conservative type people.

20 And it's not about liberal or conservative,
21 though. It's about fairness. This is our justice system. This
22 isn't politics. It's not. It's people's lives.

23 Someone died for that inmate to get to the board
24 for the most part, and the inmates that are there are dying
25 every day.

26 There has to be a semblance of fairness. There
27 has to be -- when everybody walks out of that room, as a
28 society, as a government, we haven't done our job if people

1 think it was unfair."

2 And with all due respect, the reason why people
3 think it's unfair is because of the people who sit in this
4 chair, and the number of those people who, over the course of
5 the last couple decades have been appointed to this board. And
6 here we are again, talking about on the face of it -- I'm not
7 challenging Ms. Fisher's fairness, integrity, or honesty. I'm
8 sure that she tries to be fair in every case. But I don't
9 believe she can be.

10 Earlier in the proceedings, Senator Battin made
11 the perfect point about why you should not confirm Ms. Fisher.
12 He was talking about the psychiatric reports, and as someone
13 who's an expert in this field.

14 SENATOR BATTIN: I'm not an expert.

15 MR. CHANDLER: Well, maybe not an expert, but has
16 a degree --

17 CHAIRMAN PERATA: We're not even sure of that.

18 [Laughter.]

19 MR. CHANDLER: Well, he made the point that no
20 matter how well intentioned a doctor may be, he can never run
21 from his biases. The person that he is at the moment that he
22 strikes pen to paper to make that report is, to a degree, going
23 to flow into that report.

24 And I just would respectfully submit that
25 Ms. Fisher's clear, apparent bias would disqualify her from any
26 other job in our criminal justice system, rightfully so. She
27 should have never been confirmed a year ago, and she should not
28 be confirmed to be the chairman. She doesn't have

1 qualifications --

2 SENATOR BATTIN: If Ms. Fisher gave dates all the
3 time, you wouldn't be here; would you?

4 MR. CHANDLER: I do believe I would be here to
5 say that we need unbiased people.

6 SENATOR BATTIN: Saying that she shouldn't be
7 confirmed.

8 MR. CHANDLER: Actually, I think my behavior in
9 the last couple of hearings prove that's not the case. Mr.
10 Farmer has the highest percentage of dates given of any of the
11 people, and I opposed him. And two people with lower
12 percentages I did not oppose just today.

13 I'm here to talk about fairness and integrity and
14 the process. And that isn't here.

15 CHAIRMAN PERATA: You've well made your point.

16 MR. CHANDLER: Thank you.

17 CHAIRMAN PERATA: Yes, ma'am.

18 MS. WILD: Hello. I'm Ruah Wild, and my husband
19 was barely 16 when he committed a grievous crime. And he did
20 not even have a beard, but was sent to an adult prison.

21 And 10 years later, he was found suitable and was
22 given a projected date of -- in 1987, he was given a projected
23 date of being released in 1992.

24 He was part of -- he became a political prisoner
25 at that time and was part of and a victim of the No Parole
26 policy. His date was taken two weeks before he was going to
27 leave. And he has been coming up variously one year. He's been
28 given two two-year denials, the rest of them one-year denials.

1 They have usually -- very seldom have they been one year.
2 They've often been a year-and-a-half or more.

3 The first year that he came up was '93. And he
4 was given an one-year denial. One person found that he was
5 suitable, the other two commissioners did not.

6 And then following that, the next year we thought
7 for sure he would be given a date. And he was given a two-year
8 denial. Then he had a succession of one-year denials.

9 And Ms. Fisher was set on his panel in 2005, May
10 of 2005, and gave him a one-year denial. This past May 30, she
11 found -- he got a two-year denial.

12 And I have in my hand what was given to him, a
13 little form, the reasons for denial. And it says:

14 "The crime was very cruel or
15 mean. The crime was done or
16 planned without feeling bad
17 about hurting others. The
18 reason for the crime was small
19 compared to the hurt it caused.
20 The inmate's crimes got worse or
21 more harmful. Being in prison
22 did not correct the inmate's
23 behavior. The inmate has broken
24 the rules while in prison."

25 My husband is now 45 years old. He's been in
26 prison -- this crime was committed in '77, and he will soon be
27 in prison for 29 years.

28 This was what was given to him. He did not come

1 to that hearing with a psych evaluation. It had not been
2 ordered.

3 We were in fear that he would get up to this, and
4 with the letters of support, and the hopefulness that he would,
5 be found suitable finally, we were in fear that perhaps they
6 would -- the board would find him -- would say that because he
7 did not have a psych evaluation, that it had to be postponed or
8 worse.

9 But he was given a two-year denial on these
10 things that I've -- that I've told you. And in discussing with
11 him and his attorney, this translates to -- that he did not
12 choose to discuss the crime because he could do nothing about
13 it. It can't be tried again. He cannot change what he did 29
14 years ago.

15 And also, he did not attend -- at the suggestion
16 that he attend AA and NA, drugs was not a part of his -- of his
17 background or file. It was suggested that he attend AA and NA,
18 and he chose not to because it was not his belief -- they don't
19 go in that direction.

20 There was not a significant change of any nature
21 in his '05 hearing and his now '06 hearing just this past couple
22 of weeks, and yet he was given a two-year denial. And at the
23 same time, he was not -- it was not ordered that he have a new
24 psych report. It was not ordered anything else.

25 I'm here to say that I object to Ms. Fisher's
26 being confirmed here today. And I think there's a bias. I
27 don't think that the law was followed in that case.

28 If nothing significant occurred, then -- then

1 why? Why give a two-year denial? Why wasn't he -- why didn't
2 they say some better reasons than this?

3 And my husband is not an animal, and he deserved
4 more than this. And he was found suitable by a panel of the
5 same composure or composition as what Ms. Fisher and these other
6 people are wanting to be a part of.

7 And I just don't think that she can be unbiased,
8 and I don't think that she has been. I don't think that she's
9 followed the rules.

10 Thank you.

11 CHAIRMAN PERATA: Thank you.

12 Yes, sir.

13 MR. McQUILLION: I sit back and have listened to
14 various testimonies and witnesses, and watched some of you
15 looking at the clock, so I know you're ready to go home, so I'll
16 be brief.

17 Last year, out of my own pocket, I had to pay out
18 over \$2,000 worth of MCI phone calls from prisoners from the
19 inside who know me very well, and who call me and tell me
20 things, and who ask for my help.

21 And one of the things that is common in some of
22 these phone calls is when guys are -- have gone to a hearing or
23 are getting ready to go to a hearing, is that the fear of God is
24 struck into hem when they hear Susan Fisher is going to be on
25 their committee. And it's even worse if she teams up with
26 Commissioner Harmon. They see that as a SWAT team, because
27 Harmon hardly ever grants a parole date, if any.

28 And one of the attorneys I was working for, Dan

1 Russo, had a hearing here recently. And as he came out of the
2 hearing he called me, and I says, "The hearing over?"

3 And he says, "Yeah."

4 I says, "What happened?"

5 "He got a four-year denial."

6 And I says, "Really?" I says, "Well, who was on
7 the board?"

8 He says, "Fisher."

9 I says, "She was frothing at the mouth; wasn't
10 she?"

11 He said, "How did you know?" He said, "That
12 woman's a maniac."

13 I said, "What'd she do?"

14 He says, "Man, she was just totally out of line.
15 She was just -- just angry, and just mean to this guy."

16 So, but he was not the only person that's told me
17 that. Other inmates have told me the same thing.

18 However, in fairness, I have also heard from
19 attorneys and other inmates that she can be just as sweet as she
20 can be in the hearings.

21 So, what's up with that? You know, we don't know
22 where she's coming. Sometimes a guy gives a different version
23 of the offense than the official version and she goes off on
24 him, things like that. She just loses control, according to the
25 people that tell me what's going on at these hearings.

26 I don't believe that it's any way possible that
27 she can be fair and impartial.

28 Last year I opposed her. I oppose her again this

1 year, and point out that last year we talked about these
2 multi-year denials. And as soon as I -- even after I testified
3 that it was illegal for them to do that, what did she do? She
4 went out, and her and Ms. Perez started giving out all these
5 multi-year denials, which is completely illegal.

6 If she's not going to follow the law, please
7 don't appoint her.

8 And the last thing I would like to say is this.
9 I have watched this Committee, oh, probably the last 20 years,
10 before any of you even sat on it. And during the 1990s, when
11 the Wilson No Parole policy began, got initiated as found to be
12 true in that Coleman case recently in 2005, this Committee, the
13 Senate Rules Committee confirmed all of those appointees,
14 including the SWAT team, which former commissioner, Al Levy,
15 accused them to be in a deposition of the SWAT team that went
16 around and took everybody's parole dates back for no other
17 reason than the Governor says, "I don't want any of these lifers
18 getting out."

19 And in the Davis era, the same types of people
20 put on this parole board.

21 And so, I got to thinking. You know, the real
22 problem is really not the Governor who appoints these people
23 because he's playing his political game. It's really not the
24 faults of the commissioners who get appointed because they know
25 full well what they're coming in here to do, and that's deny
26 parole.

27 The real problem has been this Committee, all
28 these years, confirming these people. And although there's \$500

1 million a year cost to the taxpayers for all these people who
2 can't get out on parole because nobody wants to parole them, it
3 falls at the door step of this Committee.

4 Today I have seen -- I listened to Senator
5 Ashburn, to you Senator Perata, to you Senator Battin, to you
6 Senator Cedillo. And all of you seem to be concerned about the
7 operation of this board, and I commend that.

8 So, I would say the buck stops here. And I would
9 really appreciate if the history of this Committee would --
10 would change and reflect that you're not going to stand around
11 any longer and allow these political appointees to be put on
12 this board who are biased, who come from a background who --
13 there's no way they can't be unbiased.

14 And send a message. Send a message, please, to
15 the Governor that this Committee is not going to tolerate this,
16 and that fair and impartially is a constitutional principle
17 that's going to be observed by this Committee.

18 Thank you. I oppose.

19 CHAIRMAN PERATA: Thank you.

20 MR. GRAY: Thank you, Mr. Chair and Members.
21 Matt Gray here on behalf of Taxpayers for Improving Public
22 Safety, neither in support nor opposition to Ms. Fisher's
23 appointment.

24 Mr. Battin, Senator Battin, you raised a question
25 earlier that deserves a thoughtful answer as to the normalcy of
26 setting parole. "Shall normally set parole," means more often
27 than not.

28 The Committee, if it's interested in this, might

1 be -- might consider one of my observations at the en banc
2 hearing for the Board of Parole Hearings. And that is that
3 there are victims' advocates who are quite outspoken at the
4 events, and they -- some of them appear to have either ID cards
5 or security passes to the building. They are not subjected to
6 the security precautions that everyone else has to go through,
7 besides the commissioners. Insofar as I know, they are not
8 employees of the agency or department.

9 They do appear to be given preferential treatment
10 with respect to the length at which they can speak about issues,
11 as well as the type of access that they have to the board
12 members that are not otherwise extended to at least the other
13 side of the aisle on these issues.

14 I'm not sure if the hugs are anything other than
15 "we're old friends," or if we work well together. I don't know.

16 But I've observed a number of things that are
17 just concerning to me, and if it's of interest to this Committee
18 you might explore it.

19 Thank you.

20 CHAIRMAN PERATA: Thank you.

21 Anything further?

22 Well, first of all, I want to thank everyone. I
23 know some may have thought that people were allowed to speak too
24 long, but there was nobody here who was a hired gun who's being
25 "on the clock." Everybody here, as far as I can tell, are here
26 because they're here as people who are interested observers.

27 If I'm wrong and somebody's being paid, I'm
28 wrong. But it appears to me that for once we have hearings that

1 citizens traveled far, or come with great personal discomfort to
2 make a case.

3 So, I want to thank you all for doing that,
4 regardless of what sides you were on.

5 I don't think there's any question that this
6 Committee has public safety as one of its highest priorities or
7 its highest priority in these proceedings.

8 But there is this issue of fairness. And I
9 frankly, and this has got nothing to do, again, with Ms. Fisher
10 or anybody else who came before us today, but I am very
11 concerned about what I've heard here today just in terms of,
12 we've reorganized now, and it sounds as it relates to parole,
13 that we might be in a bit of free-fall.

14 So, I am just going to, and this is not an
15 intention to deny your appointment, but I'm going to put this
16 over until I have a chance to sit down with the Governor and
17 talk directly with him about this.

18 You're in a key position. You were chosen by him
19 to chair it. In deference to that, if nothing else, I just want
20 to talk with him and see if you're not being asked to do some
21 things, perhaps, that are not clear and may in fact even be
22 beyond the pale.

23 So, I will just put this over one week, assuming
24 that the Governor and I will get together and talk, and then
25 we'll just take it up for a Vote Only next week.

26 And it is not my intention to deny you, but this
27 has been troubling. And again, for all three of the
28 commissioners that are here, this is not a comment about you,

1 but it's a comment about the system, and why in the hell anybody
2 would want to do anything under these circumstances.

3 I'm not going to question why you're wanting to
4 do it. Thank God you are.

5 But I don't know whether the buck stops in the
6 Governor's Office or with this Committee, but for right now,
7 it'll stop here with this Committee.

8 Thank you, and I appreciate all of you have for
9 being here, everybody who has spoken.

10 MS. FISHER: Thank you.

11
12 [Thereupon this portion of the
13 Senate Rules Committee hearing
14 was terminated at approximately
15 4:40 P.M.]

16 --ooOoo--
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CERTIFICATE OF SHORTHAND REPORTER

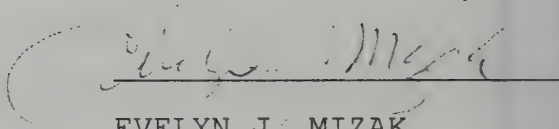
I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

19th day of June, 2006.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

ARCHIE JOE BIGGERS, COMMISSIONER BOARD OF PAROLE HEARINGS

Statement of Goals

1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure.*

My goal is to provide a quality, fair and impartial hearing for inmates. Utilizing approved, established rules and regulations will insure that once inmates are found suitable; they will not pose a danger to society or public safety.

I hope to accomplish the following:

Improve public safety by enforcing the rules and regulations of Title 15.

Training

2. *Please describe the training and any other assistance you received in preparation for your assignment as a commissioner, including knowledge of the requirements of the Penal Code and case law as they apply to the parole process. Please also detail any additional training or refresher courses you have participated in.*

Prior to being assigned as a Youth Commissioner, I participated in a five week training package, orchestrated by John Monday, who was in charge of the Youth Authority Board at the time. The training included: lectures, practical applications and observing/conducting hearings with fellow Commissioners, who were experienced. Upon assignment to the adult side, I attended and participated in a three to four week course that was designed primarily for Adult Commissioners. Although some of the material was redundant, I found it to be beneficial. It assisted me in making the transition, especially observing who had been conducting hearings at the various institutions. I have also attended several one day instructional seminars. Penal Code and Case Law were taught by the BPH Legal Staff and the Legal Management Unit.

3. *Do you believe the training is sufficient? Is there additional training that would be useful?*

I feel that the training was comprehensive; however, there is always a need for on-going training on current decisions of the court and any procedural changes.

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4. *Does anyone review your cases, particularly in your early months on the job, to help you determine best procedure? Does anyone observe your hearings to assist you?*

I am not sure of the procedures used by Decision Review in determining which cases are reviewed. I have had observers and I understand that a program is currently being discussed that would provide for staff to visit hearings.

5. *Who is available on your staff to assist you with questions regarding the law or proper policy and procedure?*

The Legal Department at BPH is available to the Commissioners to assist with questions regarding the law and proper policies and procedures.

6. *How do you communicate with your headquarters? If you are experiencing problems, who do you inform? If you have suggestions for improving the hearing process, who do you inform?*

I communicate with the BPH Headquarters by phone or e-mail. Suggestions or problems are directed to the Executive Officer. Suggestions and comments are then discussed in monthly training with Commissioners and staff.

Self Help and Vocational Education Programs for Inmates

Self help and education are typically recommended when an inmate is denied parole. The extent to which an inmate has participated in self help programs is regularly a subject of discussion in the inmate's parole suitability hearing. However, self help, education and vocational training availability varies widely.

7. *To what extent are you informed of the availability of self help groups and vocational programs at the institution where the parole applicant is incarcerated?*

Prior to my first case of the week, I request a list of the programs that are available at the institution. I also inquire with the prison staff as to any recent lockdowns and the length of time of the lockdowns to determine if the inmates have not had the opportunity to attend programs.

8. *If a prisoner requires additional self-help work but such a program is unavailable, what alternatives do you recommend, if any?*

If a program is not available, I suggest that the inmate utilize the library, read books, and if they have the resources, correspondence courses.

Hearing Preparation

Some members of your board have a difficult travel schedule and all of you visit different institutions on a weekly basis. Inmate files are not available electronically.

9. *Please describe when and how you prepare for a hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for the following week's hearings?*

I normally prepare my first two days cases on Saturday or Sunday. There have been some instances where I was able to do all of my cases during this time. The preparation for the remaining cases is done in the hotel or at the institution, depending on the day's activities. Depending on the magnitude and the complexity of the case, it can take me anywhere from 30 minutes to 1 hour to prepare each case. Cases are normally sent to my residence 7-10 days prior to my scheduled visit to the institution.

10. *What circumstance might prompt you to look beyond the information contained in the board members' hearing packets/prisoner's C-file to consult with others who may have special insight or knowledge of the case?*

I cannot think of a circumstance where I would or have looked beyond and consulted with someone who has/had special insight or knowledge of the case. My responsibilities are to review the record and give the inmate the opportunity to correct any inaccuracies.

11. *Would you advocate for preparing for cases or assembling board packets in a different manner than that currently provided?*

Yes, I would recommend one of the following three options:

(I should note the previous Executive Officer and staff have started to review with the Board better methods of assembling and delivering packets to Commissioners.)

Option 1: Have the Commissioners meet with their assigned Deputy Commissioner on Monday at the institution and prepare their cases for the week. This would give each individual the opportunity to discuss certain matters that may assist them with each case. Additionally, this would eliminate the need for the institution to prepare and mail the packages to Sacramento and then to Commissioners, resulting in a cost saving as well.

Option 2: Mail only the packages that will be utilized on Monday and perhaps Tuesday. The result will be a reduction in the cost of mailing and will allow the Commissioners who must travel by air, not to have 60 or 70 lbs of excess baggage.

Options 3: Place pertinent information on a disk and give each Commissioner the appropriate hardware/software to be able to obtain the information.

Inmate Representation

Unless they are paid privately, attorneys who represent indigent inmates are paid \$30 an hour by the state, which is capped at six-eight hours, including travel time.

12. *In your experience, does this time frame allow attorneys to sufficiently prepare? What role does attorney preparation play in the number of postponed hearings?*

In my experience, most attorneys that I have worked with appear to have sufficient time to prepare for the hearings. As for postponements, attorneys will normally request one, if in their opinion, a new psychological evaluation is needed, a Board Order Evaluation is not completed, the inmate received a recent 115 and the disposition has not been executed, the inmate did not get the opportunity to review his file, or a recent Board report is not in the package.

13. *Attorneys have complained that it is not uncommon that important information, such as recently issued appellate court opinions that affect their client's case, is not included in the materials provided to members, inmate attorneys, inmates and other interested individuals. Do you find that this is a problem? If so, what should be done?*

I have not found this to be a problem. In the event an Appellate decision is not in the file, I rely on other documents, such as the sentencing transcript, Board reports or the Probation Officer report.

14. *Attorneys also complain that it is difficult, if not impossible, to get factual matters corrected in the inmate's file. If an attorney attempts to correct the record as documented in the central file, how should it be done to assure it happens? Whose job is it to follow through on this type of correction?*

It is my understanding that current policy does not allow Commissioners to delete/change information in the inmate central files. If an attorney has a correction, then it should be corrected by the inmate, through his counselor. I believe that it should be the inmate's responsibility to ensure that any corrections have been made when he is given the opportunity to review his files.

Parole Hearing Backlog

The board is under court order in a class action suit to provide timely parole hearings. In her ruling, a Superior Court judge noted that instead of the backlog being eliminated in less than two years as the board predicted in 2001, it had actually increased at an "alarming rate" of 55 per cent. The causes of the problem are many and sometimes beyond the board's control, but the backlog is costly to the taxpayer who must not only pay for inmate incarceration but also for litigation resulting from the backlog.

15. *As a key participant in the parole process, do you have any suggestions regarding ways to eliminate the backlog?*

I believe that if we can keep twelve Commissioners including support staff, the backlog could be eliminated in a timely manner. Another possibility could be to bring back former Commissioners for a 90 day period, provide two weeks of refresher training and then send them to the field.

16. *Likewise, what recommendations would you make, if any, to improve the accuracy of often confusing data issued by the board? (Specifically at issue is how the backlog is defined, the precise number of individuals in the backlog, number of hearings scheduled and held, number of grants and denials issued, postponements ordered, and stipulations.)*

My understanding is that the Board/Staff has solved this problem and is now calculating the backlog correctly.

Audio Recordings of Parole Hearings

Almost without exception, the audio recordings of lifer hearings produce a flawed written transcript from which valuable testimony is omitted.

17. *Do you experience problems in the proper functioning of audio or videoconferencing equipment at the hearings?*

Yes, I have experienced problems with the audio and video conferencing equipment while conducting hearing.

18. *Ideally, who should be responsible at the hearing itself for addressing problems resulting from malfunctions of audio equipment or videoconferencing equipment used in the hearings?*

My opinion is that the institution staff should be responsible, since they maintain the equipment.

19. *In your view, what process would be the most helpful to you in avoiding hearing delays and postponements? Ideally, whose job should it be to operate this equipment and maintain it?*

The technical personnel at the institution should be responsible for maintaining and keeping the equipment because of their expertise. Commissioners/Deputy Commissioners do not have this expertise.

20. *Do you favor videotaping hearings for subsequent staff review or use in en banc hearings held by the full board?*

I am in favor of using videotaping for en banc hearing for the full board. I think it would eliminate certain costs and could be done when we have our monthly meetings.

21. *Who addresses equipment issues? Is it the board or Department of Corrections and Rehabilitation? Is anyone monitoring the problems and seeking to have them corrected?*

I am not sure who will be addressing this issue. At the last training session, it was my understanding that the former Executive Officer of BPH was going to address this and if necessary, purchase it as well.

Parole Suitability Decisions

Service as a board member requires balancing competing interests. There is the expectation that you will protect public safety in the dispensing of parole dates. The law requires that a year before an inmate's minimum eligible parole date, a release date shall "normally" be set, except under certain exceptional circumstances. The board has been criticized for ignoring the "normally set" provision for years. In 2005, the board reported that 3,313 suitability hearings were held, resulting in the release of 57 individuals, including seven ordered freed by the courts.

22. *From your experience, please explain briefly how you balance the competing demands.*

Public Safety is my number one concern. I take this responsibility very seriously. I follow the guidelines set forth in the California Code of Regulations, Title 15, when determining if an inmate is suitable for parole. This can be done by reviewing the inmate file to see how he has been programming, his/her behavior during incarceration. I make every attempt to make an objective decision based on those criteria, to ensure that an inmate will not be a danger to society or the public once they are return to the community.

23. *What is the criteria for issuing one-year or multi-year denials? Some inmate attorneys complain that their clients are given denials of two or more years without an adequate or proper justification. They say multi-year denials are made even though the inmate has remained trouble free and programmed excellently since the last hearing when he/she received only a one-year denial. They also say that multi year denials are ordered so the case backlog will appear to be shrinking.*

I disagree that multi-year denials have been ordered so that the backlog will appear to be shrinking. No one has ever mentioned this to me and I believe it would be illegal, improper and definitely unethical. I believe that I have always given separate reasons for giving multi-year denials. I definitely don't feel obligated to give a one year denied solely on the fact that a previous panel did. I examine all of the criteria established in Title 15

and make a reasonable decision that the inmate may need additional time to demonstrate that he will not be a danger to society or public safety when released from prison.

24. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? What should the appropriate emphasis be on the facts of the crime? Are you able to familiarize yourself with the reasons why previous panels denied suitability?*

I have been using the standard format that was provided to me after training. It contains all of the essential elements that I feel cover the areas of responsibility including the crime, social history, prior arrest(s), and post-conviction factors. As for familiarizing myself with the reasons why previous panels denied suitability, I read their decision prior to conducting the hearing.

25. *What is your view of how an inmate's psychological evaluation should be used in a lifer hearing?*

I think that the psychological evaluation is a helpful tool that assists me in determining whether an inmate is suitable for parole. However, I don't feel that it should be used solely as the overriding factor in determining suitability.

Hearing Postponements

Costly postponements of lifer hearings result from logistical problems at the prison or CDCR's failure to appropriately prepare the information packet available to board members.

26. *How might problems and unnecessary postponements be reduced? How might adult custody personnel and the board better coordinate activities? Who do you believe is ultimately responsible?*

Postponements are caused by many factors such as: at the request of the inmates and/or their attorney, which in my opinion should be limited; psychological evaluations not completed in a timely manner once Board ordered; Central-file review not completed by the inmate; Board report not completed on time; inmate providing additional information at the time of the hearing without proper time for the Panel and/or his/her attorney to review it; pending litigation; inmate's request to dismiss their attorney; and in some cases, mental health issues. Most of these issues can be addressed by the Commissioners conducting the hearing to determine if a postponement should be granted. As near as possible, in circumstances, such as issues with the Board Report, Psychological Evaluation, or mental health evaluations, coordination between the institution and the BPH Headquarters should be done prior to scheduling the case. In short, I think we are all responsible; however, I have not been with the organization long enough to suggest a remedy.

RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

TERRY ROBERT FARMER, COMMISSIONER
BOARD OF PAROLE HEARINGS

Statement of Goals

1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure.*

In hearing matters and making decisions I seek to not only uphold, to the best of my ability, the letter and spirit of the law, but also at each hearing to impart to all involved parties my recognition of the importance of the hearing on their lives. In cases where the inmate is found unsuitable for release I seek to not only set forth my particular concerns, but also to outline recommendations which will assist the inmate in improving chances for being found suitable in the future.

As a member of the Board I seek to expand discussions during Board meetings so that issues relating to policy are openly discussed, with opportunity for public input and open discussion with staff and among Board members.

Training

2. *Please describe the training and any other assistance you received in preparation for your assignment as a commissioner, including knowledge of the requirements of the Penal Code and case law as they apply to the parole process. Please also detail any additional training or refresher courses you have participated in.*

When first appointed I attended a week long introductory session on the basic responsibilities of the Board; followed by a week in the field observing hearings conducted by a more experienced Commissioner.

My prior experience as Chief Counsel to the Board was of great assistance. The Board is demonstrating a commitment to ongoing training by scheduling training sessions in connection with each monthly meeting.

3. *Do you believe the training is sufficient? Is there additional training that would be useful?*

In one sense, you can never get enough training. There is always the need to balance the time devoted to training with the demands of the job. Having been on the job for approximately one year, I find that the more I know, the more I want to know. As a specific example, I want to know more about available programs for inmates.

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4. *Does anyone review your cases, particularly in your early months on the job, to help you determine best procedure? Does anyone observe your hearings to assist you?*

All cases are subject to review. I was part of the review process as Chief Counsel. Because of this experience, I required less procedural review than other newly appointed Commissioners. However, my cases receive the same level of review for any legal or factual errors, and I have had discussions with legal staff on specific cases.

I am fortunate to live close to Board headquarters, so I know most of the staff and they are readily available to assist with any issues.

5. *Who is available on your staff to assist you with questions regarding the law or proper policy and procedure?*

As stated above, staff at the BPH Headquarters are readily available to assist with issues that arise.

6. *How do you communicate with your headquarters? If you are experiencing problems, who do you inform? If you have suggestions for improving the hearing process, who do you inform?*

As stated previously, I am fortunate to live close to Board headquarters, so I know most of the staff and they are readily available to assist with any issues. As to suggestions for improving the hearing process, I am involved in ongoing discussions with the Chair, the Executive Officer, leadership with the Rutherford Task Force, as well as fellow Commissioners during training sessions.

Self Help and Vocational Education Programs for Inmates

Self help and education are typically recommended when an inmate is denied parole. The extent to which an inmate has participated in self help programs is regularly a subject of discussion in the inmate's parole suitability hearing. However, self help, education and vocational training availability varies widely.

7. *To what extent are you informed of the availability of self help groups and vocational programs at the institution where the parole applicant is incarcerated?*

Such information becomes available to a limited degree through discussions with staff at the various institutions. As stated above, I believe much more information is needed about these programs. This issue has been discussed with other Commissioners and staff.

8. *If a prisoner requires additional self-help work but such a program is unavailable, what alternatives do you recommend, if any?*

When told that a program in any specific area is not available, an inmate is always advised to seek out self study and self help and to be prepared to demonstrate what they have done and discuss it's relevance to their suitability.

Hearing Preparation

Some members of your board have a difficult travel schedule and all of you visit different institutions on a weekly basis. Inmate files are not available electronically.

9. *Please describe when and how you prepare for a hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for the following week's hearings?*

My proximity to Board headquarters allows me to receive my files at that location. I have been provided a work station there and my files are provided at least 10 days prior to the hearing week. File review and preparation for the hearings generally takes place at home, on evenings and weekends. It averages 45 minutes per case.

10. *What circumstance might prompt you to look beyond the information contained in the board members' hearing packets/prisoner's C-file to consult with others who may have special insight or knowledge of the case?*

Although it might always be desirable to have more information about a specific circumstance, Commissioner's quickly learn to absorb the information available and make a decision on that information. There have been limited situations where the absence of information (which should have been addressed in a psychological report) might adversely affect the inmate's right to a fair hearing. In such cases the hearing would be postponed to the next available hearing to receive an updated report.

Disputes surrounding the denial of basic factual contentions underlying the commitment offense can almost never be reconciled any better than they were at trial. Furthermore, the nature and purpose of the Board hearing make it a poor forum to attempt to do so. Where such denials strongly appear that they may have substance, the case should be referred to the sentencing court and the prosecuting attorney.

11. *Would you advocate for preparing for cases or assembling board packets in a different manner than that currently provided?*

The simple answer is yes. The existing system is easy to criticize. What is more difficult is arriving at a solution which effectively meets the differing needs of everyone. It is a problem which is recognized and subject to active discussion.

Inmate Representation

Unless they are paid privately, attorneys who represent indigent inmates are paid \$30 an hour by the state, which is capped at six-eight hours, including travel time.

12. *In your experience, does this time frame allow attorneys to sufficiently prepare? What role does attorney preparation play in the number of postponed hearings?*

While I believe that the compensation is inadequate, my experience with assigned attorneys is that they come to the hearing competently prepared to represent their clients.

13. *Attorneys have complained that it is not uncommon that important information, such as recently issued appellate court opinions that affect their client's case, is not included in the materials provided to members, inmate attorneys, inmates and other interested individuals. Do you find that this is a problem? If so, what should be done?*

I do not believe this is a problem. Attorneys in the Legal Division of the Board are in close communication with the Office of the Attorney General. They are promptly advised of Court decisions and orders and Commissioners are routinely advised when such matters affect an upcoming hearing.

14. *Attorneys also complain that it is difficult, if not impossible, to get factual matters corrected in the inmate's file. If an attorney attempts to correct the record as documented in the central file, how should it be done to assure it happens? Whose job is it to follow through on this type of correction?*

Under existing procedures, the existence of acknowledged errors is documented in the record of the hearing and the correctional staff is relied upon to make the appropriate corrections. Under more ideal circumstances, a Board employee would be assigned to each institution holding hearings to ensure better pre-hearing preparation, documentation and recording of the hearing, and post-hearing follow-up.

Parole Hearing Backlog

The board is under court order in a class action suit to provide timely parole hearings. In her ruling, a Superior Court judge noted that instead of the backlog being eliminated in less than two years as the board predicted in 2001, it had actually increased at an "alarming rate" of 55 per cent. The causes of the problem are many and sometimes beyond the board's control, but the backlog is costly to the taxpayer who must not only pay for inmate incarceration but also for litigation resulting from the backlog.

15. As a key participant in the parole process, do you have any suggestions regarding ways to eliminate the backlog?

The issue of “backlog” is appropriately a significant issue for all persons connected with the hearing process. Simply stated, all inmates should have hearings conducted in accordance with the law, which includes stated time frames. Any inmate not having a timely hearing, as such, becomes part of the backlog.

The Rutherford Task Force is addressing this issue. It should be an important function of the Board to participate in and monitor the work of the Task Force and advocate for prompt implementation of recommendations.

Obviously, the Board should be maintained at full strength. It is my understanding that the Governor is committed to do that; and, in fact, has done so with a recent appointment. I understand that this is the first time this has been achieved in several administrations. With these appointments, and the additional positions authorized under reorganization legislation, I’m advised that the backlog is decreasing.

Without the benefit of in depth statistical information, conventional wisdom says that with increasing numbers of inmates becoming eligible for hearings, and with the coming of age of inmates sentenced under 3 Strikes, the backlog will continue to be a problem. Additional hearing officers will be required. A suggestion worthy of exploration is allowing the temporary appointment of former Commissioners and authorizing them to conduct hearings as retired annuitants. Such would require new legislation.

16. Likewise, what recommendations would you make, if any, to improve the accuracy of often confusing data issued by the board? (Specifically at issue is how the backlog is defined, the precise number of individuals in the backlog, number of hearings scheduled and held, number of grants and denials issued, postponements ordered, and stipulations.)

I do not claim to be a statistician. However, I do believe that the data system can be simplified. As postponements have been identified as a significant factor contributing to the backlog, we need an easy method to address the causes of postponement. Without attribution of blame, a postponement is the responsibility of one of 3 parties. An inmate may request a postponement (or stipulation or waiver) for reasons unique to his/her situation and not occasioned by institutional factors (recognition of significant factors suggesting unsuitability such as recent disciplinary behavior, absence of parole plans or positive programming, etc., illness, pending court action); the postponement may be attributable to the institution (lockdown, quarantine, absence of a required report or action); or the postponement may be attributable to the Board (lack of available Commissioners, Commissioner ruling not attributable to either of the above, etc). All postponements should be assigned to be the responsibility of one of those three entities. Then each entity can be specifically analyzed to minimize postponements occasioned by their action.

Inmates whose hearings are postponed by their own actions (or resolved by stipulation or waiver) should not be considered part of the backlog. They have waived their right to a timely hearing. Vacating a hearing at the last moment however, not only affects that inmate, but also affects the backlog by not allowing another hearing to be heard. Resources allocated to the cancelled hearing are wasted. The Rutherford Task Force is addressing this issue.

Audio Recordings of Parole Hearings

Almost without exception, the audio recordings of lifer hearings produce a flawed written transcript from which valuable testimony is omitted.

17. *Do you experience problems in the proper functioning of audio or videoconferencing equipment at the hearings?*

Yes

18. *Ideally, who should be responsible at the hearing itself for addressing problems resulting from malfunctions of audio equipment or videoconferencing equipment used in the hearings?*

The ultimate responsibility rests with the Secretary to insure that the problem is addressed and that the Board and the institutions do not perpetually blame the other. A Board employee providing direct support to the hearing, such as having a Board employee assigned to each institution as stated previously, could have direct responsibility for operating and securing the equipment, calling on a responsive institutional technical staff for maintenance and support.

19. *In your view, what process would be the most helpful to you in avoiding hearing delays and postponements? Ideally, whose job should it be to operate this equipment and maintain it?*

The responsibility of the Commissioner as hearing officer is to approach the hearing with the desire and intention that the hearing either proceed as scheduled or that if a stipulated result is requested by the inmate, the resolution is appropriate in spirit and law. Postponements should occur only because of necessity and in the absence of a reasonable alternative. The Commissioner should, to the extent possible, seek to ensure that the causes which required the postponement are resolved before the scheduled hearing.

20. *Do you favor videotaping hearings for subsequent staff review or use in en banc hearings held by the full board?*

This is worthy of discussion. Such would certainly provide a complete record. However, there are other potential cost/ benefit issues that should be explored.

21. *Who addresses equipment issues? Is it the board or Department of Corrections and Rehabilitation? Is anyone monitoring the problems and seeking to have them corrected?*

I believe that this is among the issues being addressed by the Rutherford Task Force.

Parole Suitability Decisions

Service as a board member requires balancing competing interests. There is the expectation that you will protect public safety in the dispensing of parole dates. The law requires that a year before an inmate's minimum eligible parole date, a release date shall "normally" be set, except under certain exceptional circumstances. The board has been criticized for ignoring the "normally set" provision for years. In 2005, the board reported that 3,313 suitability hearings were held, resulting in the release of 57 individuals, including seven ordered freed by the courts.

22. *From your experience, please explain briefly how you balance the competing demands.*

The phrase as set forth in Penal Code Section 3041(a) that a parole date "normally" be set is conditioned in 3041(b) by the phrase "unless it determines that the gravity of the convicted offense or the timing and gravity of the current and past convicted offenses is such that consideration of public safety requires a more lengthy period of incarceration..." Board Regulation 15 ADA Section 2281(a), mandates that when conducting a hearing the panel first consider if the prisoner is suitable for release according to the designated criteria. If the panel finds the prisoner unsuitable because it finds that he/she constitutes an unreasonable risk of danger to society, a parole date is denied irrespective of time served. The recent California Supreme Court case of *In re Dannenberg* affirmed the validity of this procedure including in its reasoning the presumed acquiescence of the Legislature.

Many of the issues and the criticism which surrounds Corrections generally, and the Board in particular, can be simply described as saying that the system is either too tough or not tough enough. As a Commissioner, it is my responsibility to follow the law as set forth in statutes and regulations and the established practices of the Board. These have been passed by the Legislature and are continually ruled upon by the Courts. There is also a long history of application of these principles by prior boards which is worthy of respect and consideration.

It is difficult to explain the balancing process beyond reciting the factors set forth in the regulations. It is impossible to do so briefly and give the subject justice. Suffice it to say that I strive to know the law and apply it fairly. Each case is an individual one and the weight given to each of the applicable factors must appropriately be considered in the context of the specific circumstances of the case.

It is not easy for a Life term inmate to be found suitable for release on parole. This is particularly true for the overwhelming majority of inmates who have been given life

terms because their crime is murder. The burden to demonstrate suitability is on the inmate and the Board has high expectations. I don't believe that the Governor, who appointed me, or the Legislature which passed the laws I apply, or the public expects anything less.

At the same time I recognize that the inmates who appear before me were not given a death sentence or life without possibility of parole. As the law recognizes the possibility of redemption, so do I. For those who diligently demonstrate suitability, release has been and will be recommended.

23. *What is the criteria for issuing one-year or multi-year denials? Some inmate attorneys complain that their clients are given denials of two or more years without an adequate or proper justification. They say multi-year denials are made even though the inmate has remained trouble free and programmed excellently since the last hearing when he/she received only a one-year denial. They also say that multi year denials are ordered so the case backlog will appear to be shrinking.*

A multi-year denial is appropriate when it is not reasonable to expect that a prisoner will be found suitable in one year. The period of denial, within the maximum allowed by law, should be consistent with the period of time that will be reasonably necessary for the prisoner to become suitable. Decisions of prior panels should be reviewed and given respect, but they are not determinative. The decision must be supported by application of the appropriate criteria to the facts of the individual case. Reducing the backlog however, is not a factor to be considered. Commissioners are always aware that decisions not so supported are subject to Board review as well as Court and public scrutiny.

24. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? What should the appropriate emphasis be on the facts of the crime? Are you able to familiarize yourself with the reasons why previous panels denied suitability?*

Procedural consistency is achieved by Commissioner training, case review and follow-up training. Absolute consistency in result will always be subject to debate because of the individual nature of each case. Again, training and review will tend toward consistency and the overall goal that similar cases are similarly handled. The facts and circumstances of the commitment offense are always a significant factor when addressing suitability. Where elements of the offense exceed the minimum level necessary to constitute that offense, such fact alone may support a finding of unsuitability. The emphasis placed on those facts and circumstances in a specific case will be individual to that case. Transcripts of all prior hearings are always available to each hearing panel.

25. *What is your view of how an inmate's psychological evaluation should be used in a lifer hearing?*

The psychological evaluation provides valuable information and is always seriously considered. There are serious questions however, relating to the appropriate value which should be given the opinions expressed relative to dangerousness and suitability. There is a lack of consensus within the profession on these issues. The problem is magnified by a lack of consistency in the preparation of these reports. It is further exacerbated when the reports are prepared by the same persons acting in the inherently conflicting roles of providing therapy and treatment and also potentially rendering adverse forensic opinions. I understand that these issues are being addressed by the Rutherford Task Force.

Hearing Postponements

Costly postponements of lifer hearings result from logistical problems at the prison or CDCR's failure to appropriately prepare the information packet available to board members.

26. *How might problems and unnecessary postponements be reduced? How might adult custody personnel and the board better coordinate activities? Who do you believe is ultimately responsible?*

It should be an important function of the Board to participate in and monitor the work of the Rutherford Task Force and advocate for prompt implementation of the recommendations. In addition, the Board should be maintained at full strength.

It is obviously the ultimate responsibility of the Secretary to address these issues and the Rutherford Task Force was appointed for that purpose. It is however, an immediate responsibility of the Board to responsibly correct problems within its control.

RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

PHILIP SCOTT INGLEE, COMMISSIONER
BOARD OF PAROLE HEARINGS**Statement of Goals**

1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure.*

My goals and objectives as a member of the Board of Parole Hearings is to plan and execute the orderly and timely conduct of lifer parole hearings assigned to me, so that both the rights of the inmates and the safety of the citizens of California is maximized. This also includes the successful participation in other responsibilities assigned to the Board, such as supporting victims and next of kin, considering and humanely processing inmate claims of Intimate Partner Battering (former BWS), recommend the resentencing of a prisoner in the interest of justice or compassionate release and supporting the Governor's request in regard to application for reprieves, pardons and commutations.

During my tenure, I plan to both meet and exceed the expectations of the people of California in regard to managing the lifer parole process and expand my professionalism and expertise as a Commissioner for the Board of Parole Hearings. Additionally, I hope that those who follow me will look upon my contribution as a challenge to meet or exceed during their tenure.

Training

2. *Please describe the training and any other assistance you received in preparation for your assignment as a commissioner, including knowledge of the requirements of the Penal Code and case law as they apply to the parole process. Please also detail any additional training or refresher courses you have participated in.*

My initial training during the spring of 2005 was well organized, but at times inconsistent in its application. Staff members assigned as my instructors were taken from their primary duties and were occasionally called back during my training. When instructors were called away, those who organized the training may not have been aware this had occurred. Therefore, the instruction continued, but with occasional gaps in the learning process. This did not become evident to me until I went into the field and had to request additional information to fill in the gaps. I believe this has now been corrected and the new commissioners appear to be receiving excellent training and follow up.

Major instructional emphases were placed upon the organization, content and use of California Code of Regulations, Title 15. *Crime Prevention and Corrections*. Penal Codes dealing with specific hearing and legal issues pertaining to the hearing process

were also covered. In addition, we have received a copy of the 2006 Edition of the Standard California Codes for our reference. Case law and specific examples of case law pertaining to lifer issues were referenced and made part of the training process.

Another key element of my education was accomplished through actual hands-on observing and experience as the third member of a hearing panel, before chairing one on my own. This proved to be a vital part of my training, as the Commissioners I worked with, were well experienced and very supportive.

Until recently, there were little new formal training or refresher courses. Most of our updated information was received by memo and during our monthly Board meetings. However, now there appears to be a concerted effort to correct this and establish an on-going program of monthly training. We recently received a draft of a "Master Training Assistance Plan" that shows great promise. This proposed plan includes training for both Commissioners and Deputy Commissioners. Additionally, this plan also outlines quality control measures and certification of the Commissioners to enhance our professionalism.

3. *Do you believe the training is sufficient? Is there additional training that would be useful?*

As I noted above, we had little formal training until most recently. Our former Executive Officer was just beginning the process and hopefully it will be continued. In regard to additional training requirements, I would again reference the recent proposed training draft presented to the Board and suggest that this should be formalized and implemented. In addition, I believe we would benefit from more timely information concerning recent legal decisions that affect the lifer hearing process.

4. *Does anyone review your cases, particularly in your early months on the job, to help you determine best procedure? Does anyone observe your hearings to assist you?*

I do not believe there is a formal review of our hearing transcripts. I asked on two occasions for this feed-back, but did not receive a formal response. However, during our training phase, we did have the opportunity to chair hearings as part of a three person panel with experienced Commissioners. They then critiqued our performance after each hearing. Other than representatives from the Senate Rules Committee visiting my hearings at Folsom, I have not knowingly, been observed by any other BPH representatives for quality control purposes.

5. *Who is available on your staff to assist you with questions regarding the law or proper policy and procedure?*

We receive outstanding support from the BPH Legal Division. In addition to being available during and after the business day, their answers are knowledgeable and easily understood. In particular, I would like to point out both attorneys Deborah Bain and Andrew Woodrow for their rapid responses and professionalism. The former Executive

Officer was also responsive to my inquiries and available by phone 24 hours a day. Other members of the BPH staff are generally supportive when contacted.

6. *How do you communicate with your headquarters? If you are experiencing problems, who do you inform? If you have suggestions for improving the hearing process, who do you inform?*

I primarily communicate with headquarters by phone. While in a prison we speak by land line phones and by cell phones on other occasions. At times, messages are left on my cell phone and responded to immediately. In addition, we also access E-mail and our mailbox in the department message center for messages and announcements. When I had recommendations concerning department communications I spoke directly to the Executive Officer.

Self Help and Vocational Education Programs for Inmates

Self help and education are typically recommended when an inmate is denied parole. The extent to which an inmate has participated in self help programs is regularly a subject of discussion in the inmate's parole suitability hearing. However, self help, education and vocational training availability varies widely.

7. *To what extent are you informed of the availability of self help groups and vocational programs at the institution where the parole applicant is incarcerated?*

Each correctional facility has different availability for self-help and vocational programs. In some cases institutions may have the availability, but because of recent violence, the prison is locked down and programs are temporarily cancelled. When necessary, I check with the Classification & Parole Reprehensive (C&PR) to find out what programs are currently being offered.

8. *If a prisoner requires additional self-help work but such a program is unavailable, what alternatives do you recommend, if any?*

When a prisoner requires additional self-help, but it is not available in their institution I recommend three alternatives. The first is to use the prison library and read appropriate self-help books and then keep a log to present to the next hearing panel to demonstrate their activity. The second is to organize study groups with the prison's approval to carry on their own self-help programs. The last, is to take correspondent courses available through junior colleges, universities and other available alternatives.

Hearing Preparation

Some members of your board have a difficult travel schedule and all of you visit different institutions on a weekly basis. Inmate files are not available electronically.

9. *Please describe when and how you prepare for a hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for the following week's hearings?*

Files for my next hearings are generally delivered to my home one week in advance. Once received I check them to insure that they are for the correct week and institution. I then begin the process of reading through the key elements of the file and tabbing those portions that I will need to access during the hearing. From start to finish, this process takes between 45 minutes to an hour to prepare each file. The evening prior to the actual hearing, I review each file again by going over the key elements and make any notes that may be necessary.

10. *What circumstance might prompt you to look beyond the information contained in the board members' hearing packets/prisoner's C-file to consult with others who may have special insight or knowledge of the case?*

It is rare that I need to go beyond the hearing packet or the C-file to adequately conduct a hearing. However, on occasion I have contacted the Legal Division in advance to check on legal matters with which I am not familiar. Additionally, I consult with those staff members who have been involved with an Intimate Partner Battering case to gain additional insight into its circumstances. Finally, I have contacted the Investigative Division when a matter arises in which an inmate's case may have required earlier investigated action.

11. *Would you advocate for preparing for cases or assembling board packets in a different manner than that currently provided?*

Over the last year I have grown comfortable with receiving my cases early in order to prepare them before the hearing dates. Receiving the packages at the prison for review could lead to poorly prepared hearings and Commissioner burn-out. The current packages are cumbersome and could be streamlined without losing vital information. I would suggest that a committee of Commissioners and Deputy Commissioners be appointed in order to make recommendations in this regard. This same committee could also review the potential of computerizing the entire process and reducing the need for hard copy entirely.

Inmate Representation

Unless they are paid privately, attorneys who represent indigent inmates are paid \$30 an hour by the state, which is capped at six-eight hours, including travel time.

12. *In your experience, does this time frame allow attorneys to sufficiently prepare? What role does attorney preparation play in the number of postponed hearings?*

My experience leads me to believe that the time frame allowed for indigent inmate's attorneys to prepare for their hearing is sufficient. I have never had an inmates counsel use their lack of paid preparation time as a reason to postpone a hearing. As a note, while recently speaking to an attorney who represents indigent inmates, he mentioned that they have an eight, not a six hour cap on their paid preparation time.

13. *Attorneys have complained that it is not uncommon that important information, such as recently issued appellate court opinions that affect their client's case, is not included in the materials provided to members, inmate attorneys, inmates and other interested individuals. Do you find that this is a problem? If so, what should be done?*

From time to time inmate's attorneys complain about missing information in the materials provided in their packets, but this has not proven to be a significant problem. In some cases, this has been the problem of the prison staff in not completing the packages. I would recommend that each institutions Classification and Parole Representative be better trained in putting the correct documents in the hearing files on a uniform bases, throughout the state.

14. *Attorneys also complain that it is difficult, if not impossible, to get factual matters corrected in the inmate's file. If an attorney attempts to correct the record as documented in the central file, how should it be done to assure it happens? Whose job is it to follow through on this type of correction?*

When there is incorrect information in an inmate's file, I place a memo in the hearing documentation file that is returned to the lifer desk for correction. I also recommend to the inmates they should follow up with their counselors to be sure the correction has been made. If the error is significant enough, I would suggest that the inmate's attorney also follow up with a memo. While a Commissioner has no control over the inmate's records, I believe it is our responsibility to point out errors that need to be corrected.

Parole Hearing Backlog

The board is under court order in a class action suit to provide timely parole hearings. In her ruling, a Superior Court judge noted that instead of the backlog being eliminated in less than two years as the board predicted in 2001, it had actually increased at an "alarming rate" of 55 per cent. The causes of the problem are many and sometimes beyond the board's control, but the backlog is costly to the taxpayer who must not only pay for inmate incarceration but also for litigation resulting from the backlog.

15. *As a key participant in the parole process, do you have any suggestions regarding ways to eliminate the backlog?*

In regard to eliminating the backlog, I would recommend appointing more Commissioners and hiring more support staff. Additionally, there should be more requirements placed on the inmates and their attorneys to request postponements far enough in advance, so that the staff can make timely adjustments.

16. *Likewise, what recommendations would you make, if any, to improve the accuracy of often confusing data issued by the board? (Specifically at issue is how the backlog is defined, the precise number of individuals in the backlog, number of hearings scheduled and held, number of grants and denials issued, postponements ordered, and stipulations.)*

It is my understanding that the Board is currently calculating the backlog correctly. As I am not part of the BPH administration, it is beyond my scope of authority to monitor the accuracy of the backlog data. However, I believe that a hearing is considered late, if it is held anytime after the date in which it is due.

Audio Recordings of Parole Hearings

Almost without exception, the audio recordings of lifer hearings produce a flawed written transcript from which valuable testimony is omitted.

17. *Do you experience problems in the proper functioning of audio or videoconferencing equipment at the hearings?*

On occasion, we do experience problems with the audio recording and video conferencing equipment at a hearing.

18. *Ideally, who should be responsible at the hearing itself for addressing problems resulting from malfunctions of audio equipment or videoconferencing equipment used in the hearings?*

In the case of problem audio recording equipment, only the prisons have technicians to either repair or replace defective equipment. However, in the case of videoconferencing equipment, it appears that the prisons do not have trained personnel to repair these systems. While holding hearings at the California State Prison, Los Angeles, their videoconferencing equipment failed and we discovered that no one in the prison knew how to repair it. In addition, we also discovered that the State apparently did not have a relationship with a firm to service the system. We solved the problem by having a member of the Los Angeles District Attorney's office attend in person. This option is generally not available. Because of the remote locations of most of the State's prisons, they need to have personnel available to repair this equipment, or have back up equipment available.

19. *In your view, what process would be the most helpful to you in avoiding hearing delays and postponements? Ideally, whose job should it be to operate this equipment and maintain it?*

While I have had hearings delayed, I have never had a hearing postponed because of a malfunctioning audio or videoconferencing equipment. The most reliable operation is at Chuckawalla Valley State Prison, where they both operate and maintain their own equipment. Relying upon untrained BPH personnel to accomplish this, is not always an acceptable option.

20. *Do you favor videotaping hearings for subsequent staff review or use in en banc hearings held by the full board?*

I have no particular feeling in regard to the use of video taped hearings for subsequent staff review or en banc hearings by the full Board. I assume the need for this type of electronic meeting documentation, may be based upon the potential legal issues that could arise in the future.

21. *Who addresses equipment issues? Is it the board or Department of Corrections and Rehabilitation? Is anyone monitoring the problems and seeking to have them corrected?*

As a Commissioner, I have no exposure into who is responsible for the Department of Correction and Rehabilitation's equipment issues. I must refer this question to the BPH Administration for a reply. No one has ever asked me for my input into this matter.

Parole Suitability Decisions

Service as a board member requires balancing competing interests. There is the expectation that you will protect public safety in the dispensing of parole dates. The law requires that a year before an inmate's minimum eligible parole date, a release date shall "normally" be set, except under certain exceptional circumstances. The board has been criticized for ignoring the "normally set" provision for years. In 2005, the board reported that 3,313 suitability hearings were held, resulting in the release of 57 individuals, including seven ordered freed by the courts.

22. *From your experience, please explain briefly how you balance the competing demands.*

I understand the issue of competing demands; in that the inmates have a conditional liberty interest in receiving a parole date and a chance to demonstrate their rehabilitation. Additionally, the Board has the responsibility to ensure that those inmates receiving grants of parole are no longer a threat to public safety if released from prison. I take my responsibility as a Commissioner seriously and defer to the California Supreme Court's

opinion in their John E. Dannenberg decision, that public safety is the paramount consideration in parole matters.

In the Dannenberg decision, the Supreme Court defined the extent of the Board's discretion in this matter. The court stated that in the language of Penal Code Section 3041, which requires the Board to set release dates in a manner that will provide uniform terms for offenses of similar gravity, it does not require the Board to consider term uniformity before denying a prisoner parole on the basis of public safety.

Penal Code Section 3041 does not require the Board to schedule an inmate's release when it believes that the gravity of the commitment offense indicates a continuing danger to public safety, simply to ensure that the length of the inmate's confinement will not exceed that of others who committed similar crimes.

The data that indicates that only 57 lifer inmates were released in 2005 does not accurately reflect the actual number of inmates who received proposed grants of parole. That number will better demonstrate the Board's parole decisions in this regard.

Finally, I follow the Penal Code and the guidelines as set forth in Title 15, when determining if an inmate is suitable for parole.

23. *What is the criteria for issuing one-year or multi-year denials? Some inmate attorneys complain that their clients are given denials of two or more years without an adequate or proper justification. They say multi-year denials are made even though the inmate has remained trouble free and programmed excellently since the last hearing when he/she received only a one-year denial. They also say that multi year denials are ordered so the case backlog will appear to be shrinking.*

To the best of my knowledge, I have always set separate reasons in my multi-year denial parole decisions. If it is not reasonable for an inmate to expect to be granted parole within one year, I do not believe it is reasonable to give the inmate a one year denial just because a previous hearing panel did so. Each hearing situation is unique and must be decided upon its own merits.

The criteria I use when deciding upon a multi-year denial is outlined in the Penal Code and Title 15. I have never been instructed, nor have I given a multi-year denial for the purpose of reducing the backlog. To do this would be unethical and certainly illegal. In this regard, it would be helpful to learn the names of the inmates and the attorneys to which you are referring. If such information was available, a study of the transcript could be made in order to gain a better understanding of the problem.

24. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? What should the appropriate emphasis be on the facts of the crime? Are you able to familiarize yourself with the reasons why previous panels denied suitability?*

There are consistent formats for lifer hearings which designate specific areas of responsibility in the conduct of each hearing. The gravity of the crime or the crimes committed is a significant factor in viewing the facts of the inmate's offense. I always read the decisions of the previous panel, in order to gain an appreciation of their final conclusions. These transcripts are available for each inmate's subsequent parole hearing.

25. *What is your view of how an inmate's psychological evaluation should be used in a lifer hearing?*

An inmate's psychological report is an important element in determining the public safety issue in the granting of parole. If done correctly, the assessment of risk in a report can provide commissioners with important professional guidance in the decision making process. Unfortunately, these reports do not always provide us with the level of confidence on a consistent basis. These reports and their methods and quality of reporting tend to differ from prison to prison. This could be improved, by setting statewide standards for clinicians who specifically specialize in determining risk assessment of lifer inmates.

Hearing Postponements

Costly postponements of lifer hearings result from logistical problems at the prison or CDCR's failure to appropriately prepare the information packet available to board members.

26. *How might problems and unnecessary postponements be reduced? How might adult custody personnel and the board better coordinate activities? Who do you believe is ultimately responsible?*

I believe that improvements have been made in eliminating unnecessary postponements. The former Executive Officer placed particular emphases in this area of concern. In my case, the only time a postponement is warranted, is when it is specifically requested by the inmate's attorney or the prison and the circumstances leave no other reasonable alternative. There once was a particular problem of postponing a hearing just to update psychological reports. This has been corrected and only under the most egregious situations is this now being done.

I understand that in prior years there were administrative conflicts between the prisons and the Board. With minor exceptions, I have had good cooperation from the C & PR personnel in the various prisons. When there has been a problem, I have spoken to the most responsible administrative person available and the issues have been quickly resolved. I believe that on a day to day basis a Commissioner has the responsibility to resolve problems at their point of origin. If that is not possible, then the BPH Executive Officer needs to contact the Warden of the prison involved and work out a solution. This should only be a final resort when all else fails.

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RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

SUSAN L. FISHER, CHAIR
BOARD OF PAROLE HEARINGS

Statement of Goals

1. *What are your goals and objectives as a member of the Board of Parole Hearings? What do you hope to accomplish during your tenure.*

There are many goals that I would like to see the Board reach during the balance of my tenure. There have been many changes to the BPH in a very short period of time, both in structure and personnel. I would like to help bring stability and a team effort to the Board so we can become proactive in addressing potential problems before they occur.

Certainly, I would like to see us in compliance with the Valdivia and Rutherford decisions.

I want to address and resolve the difficulties we have at the institutions related to late paperwork, faulty equipment, unreported ADA issues, etc., that cause delays and postponements.

I want to help develop and participate in training for the Commissioners and Deputy Commissioners that is helpful, practical and updated regularly.

BPH Chair Duties

2. *As chair, what are your actual responsibilities beyond that of other board members? What do you hope to accomplish during your tenure?*
3. *As chair, do you have special responsibilities for working to improve lifer hearing processes or BPH operations? If so, how do you undertake these responsibilities? Do you consult with stakeholders? Please provide examples if possible.*

With the reorganization of CDCR and BPH, it was perceived that the Chair and the Commissioners reported directly to the Executive Officer. This has been the practice since the change occurred. Only recently the duties of the Chair are again being redefined by the Governor's Office. As Chair I have been doing lifer hearings almost every week. Only recently, due to these pending changes, I have adjusted my schedule to work in the office at least one week of every month. I am also working closely with our new acting Executive Officer. I attempt to have regular contact with the other Commissioners in an effort to provide a conduit to the EO, BPH staff and the Governor's office.

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I have, in the last few months, been documenting some of the ongoing problems that we experience logistically and looking for ways to make lifer hearings go more smoothly. This project also included a plan to do more field training of Commissioners and Deputy Commissioners related to lifer hearings, which has recently started. Since I am in the field, along with attorneys from both sides of the table, I am able to have regular input from them. I also made a point of meeting with the curriculum writer who was hired by Mr. Kenneally to insure that any plans for future training would be practical and helpful

Training

4. *Please describe the training and any other assistance you received in preparation for your assignment as a commissioner, including knowledge of the requirements of the Penal Code and case law as they apply to the parole process. Please also detail any additional training or refresher courses you have participated in..*
5. *Do you believe the training is sufficient? Is there additional training that would be useful?*
6. *Does anyone review your cases, particularly in your early months on the job, to help you determine best procedure? Does anyone observe your hearings to assist you?*
7. *Who is available on your staff to assist you with questions regarding the law or proper policy and procedure?*
8. *How do you communicate with your headquarters? If you are experiencing problems, who do you inform? If you have suggestions for improving the hearing process, who do you inform?*

My training was different than our more recent appointees. I was trained in the office by staff subject matter experts and then spent two or three weeks in the field with an experienced Commissioner and Deputy Commissioner. I feel that my training was quite sufficient and would like to see us doing the same for every current Board member to insure the quality and consistency of our hearings. Recently, we have been deploying every available Commissioner as quickly as possible in an effort to address the backlog. I believe this quick turnaround contributes to inconsistencies and misinformation.

Our legal staff is available to help with any questions that might arise during the hearings. They can be reached by cell phone if they are not in the office when we call for assistance. There are also staff members in our legal office who review transcripts; however, no one has been observing hearings in order to assist new Commissioners.

When I am experiencing problems or have suggestions for improving the hearing process, I try to speak to the person handling the particular area I am addressing. I try to

participate as often as possible in the regularly scheduled Rutherford task force meetings and bring my institutional concerns to the CDCR representatives who attend.

Self Help and Vocational Education Programs for Inmates

Self help and education are typically recommended when an inmate is denied parole. The extent to which an inmate has participated in self help programs is regularly a subject of discussion in the inmate's parole suitability hearing. However, self help, education and vocational training availability varies widely.

9. *To what extent are you informed of the availability of self help groups and vocational programs at the institution where the parole applicant is incarcerated?*

I always try to ask about available programs at the institutions where I work. In the past we have not been provided with lists of programs that include vocational, Prison Industry Authority (PIA), self-help and group therapy programs that have been or are available in the institutions. My goal is to work with CDCR to provide this information to the Commissioners in an updated form at weekly hearings. This information would assist Commissioners in determining, more accurately, an inmate's suitability for parole.

10. *If a prisoner requires additional self-help work but such a program is unavailable, what alternatives do you recommend, if any?*

I often indicate to inmates that they should consider doing self-help work on their own, if possible. Programs are often limited, but, even where programs are available, an inmate may find helpful information and self-help in the library or through books sent by his family. This is a useful suggestion in helping to motivate prisoners to program in a positive manner.

Hearing Preparation

Some members of your board have a difficult travel schedule and all of you visit different institutions on a weekly basis. Inmate files are not available electronically.

11. *Please describe when and how you prepare for a hearing, including the average amount of preparation time spent on each case. Precisely when are files made available to you for the following week's hearings?*

Hearing packets are currently being mailed to our homes about two weeks ahead of time. I prepare for hearings by reading through the various sections of the packet, marking areas that will be covered automatically (summary, prior history, parole plans, etc.) and making written notes. Preparation time varies according to the amount of information included in the packet.

12. *What circumstance might prompt you to look beyond the information contained in the board members' hearing packets/prisoner's C-file to consult with others who may have special insight or knowledge of the case?*

If there is conflicting information or incomplete information in the files, we might follow up with staff at the institution, consult with our legal staff or request an investigation be done by the BPH investigations office.

13. *Would you advocate for preparing for cases or assembling board packets in a different manner than that currently provided?*

Because we receive our hearing packets so far ahead of time, the Commissioner's packet is often missing the most updated information. I would advocate having the Commissioners and Deputy Commissioners arrive at the institution on Monday as usual but have them spend that day working together to prepare for the week's hearings. They would have the inmate's C-file as well as the hearing packets and could anticipate any problems that might arise due to missing information, etc.

Inmate Representation

Unless they are paid privately, attorneys who represent indigent inmates are paid \$30 an hour by the state, which is capped at six-eight hours, including travel time.

14. *In your experience, does this time frame allow attorneys to sufficiently prepare? What role does attorney preparation play in the number of postponed hearings?*

Most of the attorneys I work with are prepared. There are occasional exceptions, of course. One problem that arises is when an inmate refuses to meet with the attorney prior to the day of the hearing.

15. *Attorneys have complained that it is not uncommon that important information, such as recently issued appellate court opinions that affect their client's case, is not included in the materials provided to members, inmate attorneys, inmates and other interested individuals. Do you find that this is a problem? If so, what should be done?*

Late information is a problem more often, in my experience, than missing information. We often receive official letters and institutional reports on the day of the hearing, which has the most impact on the inmate's attorney. I have been talking with various attorneys, CDCR staff and board staff to try to find a more efficient way to get information to the attorneys prior to the ten days allowed and to provide some proof of delivery.

16. *Attorneys also complain that it is difficult, if not impossible, to get factual matters corrected in the inmate's file. If an attorney attempts to correct the record as documented in the central file, how should it be done to assure it happens? Whose job is it to follow through on this type of correction?*

Corrections to the inmates C-file must be done by CDCR. The commissioners cannot add or take away anything in the file. I believe that the best person to make these corrections would be the inmate's correctional counselor.

Parole Hearing Backlog

The board is under court order in a class action suit to provide timely parole hearings. In her ruling, a Superior Court judge noted that instead of the backlog being eliminated in less than two years as the board predicted in 2001, it had actually increased at an "alarming rate" of 55 per cent. The causes of the problem are many and sometimes beyond the board's control, but the backlog is costly to the taxpayer who must not only pay for inmate incarceration but also for litigation resulting from the backlog.

17. *As a key participant in the parole process, do you have any suggestions regarding ways to eliminate the backlog?*

The most important factor in eliminating the backlog is a full complement of Commissioners. It would be helpful to also have more support staff to insure that the necessary information is available for every hearing. Also, if postponements and stipulations could be done at the earliest possible date, scheduling could "backfill" and make the best use of the time available.

18. *Likewise, what recommendations would you make, if any, to improve the accuracy of often confusing data issued by the board? (Specifically at issue is how the backlog is defined, the precise number of individuals in the backlog, number of hearings scheduled and held, number of grants and denials issued, postponements ordered, and stipulations.)*

I believe the earlier confusion over calculating the backlog has been remedied. In fact, I understand that more specific information is being compiled related to postponements by the board versus requests by the inmates. I was not aware that the board had been incorrect in calculating the number of hearings scheduled, grants and denials. It is something that I will have to inquire about.

Audio Recordings of Parole Hearings

Almost without exception, the audio recordings of lifer hearings produce a flawed written transcript from which valuable testimony is omitted.

19. *Do you experience problems in the proper functioning of audio or videoconferencing equipment at the hearings?*
20. *Ideally, who should be responsible at the hearing itself for addressing problems resulting from malfunctions of audio equipment or videoconferencing equipment used in the hearings?*
21. *In your view, what process would be the most helpful to you in avoiding hearing delays and postponements? Ideally, whose job should it be to operate this equipment and maintain it?*
22. *Do you favor videotaping hearings for subsequent staff review or use in en banc hearings held by the full board?*
23. *Who addresses equipment issues? Is it the board or Department of Corrections and Rehabilitation? Is anyone monitoring the problems and seeking to have them corrected?*

We often encounter problems with our audio equipment.

Since the equipment is kept at the institutions, it should be stored and maintained by the institution staff. One problem that often occurs is that BPH equipment is used by CDCR staff. It may be necessary to lock up equipment between hearings to keep it from being broken or removed. I think that having the Deputy Commissioner operate the recorders is fine as long as the equipment is kept in good repair and batteries and tapes are easily accessible.

The BPH is currently looking into replacing the current equipment and exploring all of the options available to us for insuring the quality of the record.

Parole Suitability Decisions

Service as a board member requires balancing competing interests. There is the expectation that you will protect public safety in the dispensing of parole dates. The law requires that a year before an inmate's minimum eligible parole date, a release date shall "normally" be set, except under certain exceptional circumstances. The board has been criticized for ignoring the "normally set" provision for years. In 2005, the board reported that 3,313 suitability hearings were held, resulting in the release of 57 individuals, including seven ordered freed by the courts.

24. *From your experience, please explain briefly how you balance the competing demands.*

I am very aware of the seemingly competing interests. Of course the #1 concern is public safety. However, the public safety can be protected while, at the same time, the inmate's rights are respected. I try hard to approach every hearing with an open mind. I consider

all of the information available to me, historical and current, and make the best decision that I can. I understand that my decisions are often responsible for taking years of freedom from an inmate's life and I don't take that lightly. I also know that, with the wrong decision, I could be placing someone at risk of future harm.

25. *What is the criteria for issuing one-year or multi-year denials? Some inmate attorneys complain that their clients are given denials of two or more years without an adequate or proper justification. They say multi-year denials are made even though the inmate has remained trouble free and programmed excellently since the last hearing when he/she received only a one-year denial. They also say that multi year denials are ordered so the case backlog will appear to be shrinking.*

The criteria that I use for multiple year denials are most often related to the inmate's program and disciplinary history, and what I feel he must accomplish in order to be found suitable for parole. When I came to the Board, I encountered numerous inmates who had been given multiple one-year denials in spite of the fact that they needed more time to be found suitable. They were understandably angry and frustrated, as they had been led to believe that they were probably one year away from a grant. In questioning former commissioners I was told that this was common practice. Often, when they gave a one-year denial it was not because they felt the inmate was a year away from parole, and in fact, they knew that he would probably have many one-year denials in a row. I try to be very specific in discussing the panel's decision at the end of a hearing as to why an inmate is denied parole, why it may be a multiple year denial and what we believe the inmate needs to accomplish.

26. *What should the Legislature expect from board members regarding a consistent format for lifer hearings? What should the appropriate emphasis be on the facts of the crime? Are you able to familiarize yourself with the reasons why previous panels denied suitability?*

There is a format for lifer hearings that Commissioners should be following. Of course, there will always be differences simply due to style and personality. I have heard that recently hearings vary quite a bit and feel that it is due to the limited training that Commissioners have been receiving. I hope to be able to help correct this problem in the near future by working with each Commissioner in the field.

I do familiarize myself with the decisions of prior panels when I am conducting a hearing. The facts of the crime are certainly an important consideration but only one of the many important considerations. Each case has to be handled individually. In some, where the crime was especially heinous, it may have more bearing on a decision.

27. *What is your view of how an inmate's psychological evaluation should be used in a lifer hearing?*

Psychological evaluations are only one of many tools used by panels in determining suitability. They simply give us a better understanding of what the doctors think. Often, an inmate has multiple reports with conflicting opinions. The Commissioners must give them the appropriate weight as with all other available information.

Hearing Postponements

Costly postponements of lifer hearings result from logistical problems at the prison or CDCR's failure to appropriately prepare the information packet available to board members.

28. *How might problems and unnecessary postponements be reduced? How might adult custody personnel and the board better coordinate activities? Who do you believe is ultimately responsible?*

I believe that there are some simple solutions to many of the postponements. Inmates should not be placed on calendar without the necessary paperwork being completed and in his file. Also, ADA issues must be screened carefully and accommodations must be arranged prior to the day of the hearing. We shouldn't be searching for an accommodation/device as we are about to start a hearing. Someone at the institution must be made responsible for follow up with plenty of time to make sure that crucial reports, etc., are there. I would think that a simple checklist could be used to prompt calls to the appropriate parties.

Also when postponements, waivers or stipulations are requested by inmates they should be done in a manner that will allow BPH scheduling to fill in the time slots left open by these changes. Better planning up front will make schedules run more smoothly and efficiently.

Current Members of Board of Parole Hearings
Parole Consideration Hearing Information
From 01/01/05 to 03/31/06

	Fisher 1/05 to 3/06	Lee 3/05 to 3/06	Inglee 4/05 to 3/06	Farmer 7/05 to 3/06	Sawyer 7/05 to 3/06	Garner 10/05 to 3/06	Bryson 11/05 to 3/06	Biggers 3/06	Davis 3/06
Hearings	963	701	490	353	479	252	276	34	34
Grants	21	12	32	18	20	14	10	0	1
Deny	726	484	380	288	365	185	218	30	25
1 yr	216	236	160	78	130	71	36	8	4
2 yrs	221	120	121	85	137	58	73	11	13
3 yrs	117	50	53	60	64	30	45	8	6
4 yrs	86	53	28	28	25	16	26	2	2
5 yrs	98	25	18	37	9	10	38	1	0
Stips	171	115	107	69	112	44	55	5	4
Postpone	206	194	74	47	93	52	46	4	9
I/Att	157	134	55	36	74	30	15	1	7
BPT	49	160	19	11	19	22	31	3	2
CDC	0	0	0	0	0	0	0	0	0

**Life Prisoner Hearing and Decision Information
for Calendar Year 2005**

	CY2005
Total Scheduled Hearings:	4,953
Initial	710
Progress	6
Rescission	17
Subsequent	4,220
PBR	0
GOV	0
Unknown	0
 Parole Decisions:	
Total Denials:	3,117
Denials, 1 yr	1,179
Denials, 2 yrs	981
Denials, 3 yrs	488
Denials, 4 yrs	277
Denials, 5 yrs	212
 Advance Date	5
Stipulations	716
Postponements	1,630
Reaffirm	6
Rescind Date	3
Extension	2
Unknown Disposition	0
Effective Grants	166
Proposed Grants	161
 Dec. Disapprove	-

Note: The numbers will not add up due to other miscellaneous-type hearings not noted in the above column.

The total number of hearings actually conducted are: Progress-6; Rescission-17; Denials-3,117; Proposed Grants-161; Continue-12 = 3,313

Program: LLN - J:Excel Rpts/Lifer/Liferstat_CY2005.xls
Source file: BPT - Oracle Lifer Hearing

Management Information Section
Administrative Services Division

Board of Prison Terms
State of California
Run Date: January 7, 2005
Revised Date: March 5, 2005

**Life Prisoner Hearing and Decision Information
for Calendar Year 2004**

	CY2004
Total Scheduled Hearings:	4,552
Initial	849
Progress	11
Rescission	3
Subsequent	3,889
PBR	0
GOV	0
Unknown	0

Parole Decisions:

Total Denials:	2,620
Denials, 1 yr	1,109
Denials, 2 yrs	861
Denials, 3 yrs	352
Denials, 4 yrs	222
Denials, 5 yrs	78

Advance Date	10
Stipulations	549
Postponements	1,682
Reaffirm	0
Rescind Date	3
Extension	0
Unknown Disposition	0
Effective Grants	204
Proposed Grants	214

Dec. Disapprove -

Note: The numbers will not add up due to other miscellaneous-type hearings not noted in the above column.

The total number of hearings actually conducted are: Progress-11; Rescission-3; Denials-2,620; Proposed Grants-214; Continue-13 = 2,861

Contents of Life Parole Consideration Hearing Packet

1. Cumulative Case Summary
 - Legal status summary
 - Institutional intake evaluation
 - Federal and State rap sheets
2. Board reports (all)
3. Psychiatric evaluations (all)
4. Prior decisions (all)
5. Notices (PC §3042) and responses including:
 - Support letters (present letters only in packet, previous letters in C-file)
 - Opposition letters (present letters only in packet, previous letters in C-file)
6. Legal documents (if available)
 - Probation officer's report
 - Arrest report (if available)
 - Abstract of Judgment
 - Charging documents
 - Appellate decision
 - Sentencing Transcript
 - 1203.01 statements
7. Miscellaneous including:
 - Crime partner's parole decision, if any
 - Notice of hearing rights (present hearing only)
 - Disciplinary reports and incident reports (all)
 - Laudatory chronos (all)
 - Any other relevant evidence submitted by the defense or prosecution



May 31, 2006

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Ms. Sabelhaus:

It is indeed an honor and a privilege to have been appointed to the Commission on State Mandates and I welcome the opportunity serve the citizens of our State. I am very aware of the responsibilities and duties of my position and I look forward to the many opportunities and challenges that face the Commission now and in the future.

I have been involved in state and local government for over 30 years. In 2004, I was elected to the Laguna Niguel City Council and currently serve as the City's representative to the Southern California Association of Governments (SCAG) and as Alternate Representative to the California Joint Powers Insurance Agency (CJPIA).

As a Commissioner, one of my goals will be to ensure that the Commission continues to work in a timely and fair manner to determine if local agencies and school districts are entitled to reimbursement for increased costs mandated by the State. I will work closely with my fellow commissioners, staff, and the public we serve to fulfill the Vision Statement of the Commission - *"The Commission on State Mandates implements the most effective, economical, and expeditious services and processes to resolve disputes over state mandated local programs in a fair and impartial manner."*

Specific goals for my tenure ahead include:

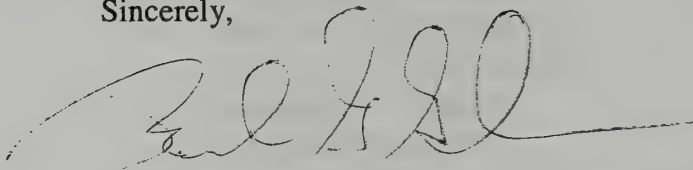
1. Work closely with fellow commissioners and staff to achieve mandate reform in a collegial manner that improves our policies and procedures.
2. Continue to work closely with the State Legislature, State Controllers Office, State Treasurer and Department of Finance to ensure that they are informed of Commission decisions in a timely and efficient manner in order for them to make informed funding decisions.
3. Work with staff to address the large backlog of test claims in an effort to improve the efficiency and timeliness of the process.

JUN - 1 2006

4. As a Commissioner, provide input to develop innovative strategies that allow the Commission to truly address the needs of our end customer – cities, counties and school districts.
5. Be a good steward of state resources.

Thank you for taking the time to review my appointment to the Commission on State Mandates. I look forward to my continued tenure on the Commission and to being confirmed by the State Senate. Should you have any questions or require additional information, please do not hesitate to contact me at (949) 362-4376.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Glaab", with a long horizontal flourish extending to the right.

Paul G. Glaab
Council Member

Encl. FPPC Form 700

STATEMENT OF PURPOSE

Sarah Reusswig Olsen
Commission on State Mandates
May 31, 2006

The mission of the Commission on State Mandates (CSM) is (1) to determine whether new laws passed by the state Legislature, new regulations implemented by state agencies, or new executive orders issued by the Governor require local governments to implement new programs or increased levels of service and (2) to adopt guidelines for local government claims under the reimbursement requirement. In addition, the CSM may be called upon to make a determination concerning significant fiscal distress when a county applies to reduce certain payments to local citizens below levels currently set in law.

Governor Schwarzenegger has appointed me to membership on the CSM as the public member with a background in public finance. In this role, it is my responsibility to sit with the other six members of the Commission to provide an impartial hearing on the merits of local government and school district claims regarding state mandates, and to make a fair determination regarding the merits of the case.

During my seventeen-year career as an analyst and consultant to the California Legislature, I participated in the crafting of legislation that affects local government programmatically and fiscally. Now I am a community volunteer raising my children in Southern California. The appointment to the CSM represents for me an opportunity to continue to contribute to the ongoing discussion of improving the lives of Californians by making their government entities work effectively as public policy partners.

Toward this end, my goal is to foster timeliness and openness in the process, to work with Commission staff and the other members to reduce the large backlog of cases, and to engage in discussions regarding how the mandate determination and reimbursement processes might be streamlined to effect more timely action in the future. I also hope to support the Chair and the CSM staff on budget and administrative matters.

MAY 31 2006

COUNTY OF TULARE

BOARD OF SUPERVISORS



STEVEN WORTHLEY
Chairman

May 30, 2006

Honorable Don Perata, Chairman
Senate Rules Committee
State Capitol, Rm. 420
Sacramento, CA 95814-4900

Dear Mr. Perata:

Your letter of May 15, 2006 requested a brief statement of my short and long term goals as a member of the Commission on State Mandates.

My short term goals include learning the "lay of the land". Every board or commission on which I have served has its written rules and unwritten culture. Both take time to learn and appreciate. In the meantime, my goal is to be prepared before the meetings, listen intently to the oral presentations given at the meetings, and analyze the law and facts in rendering a decision. I believe it is also important to explain by positions openly and positively with the commission members and engage in open dialogue so that there is a mutual understanding of our respective positions.

My long term goals would be to assist in facilitating changes which would expedite the mandate proceedings process. There appears to be universal agreement that the current approach is too time consuming and expensive to be an effective means of meeting the original mandates of the California Constitution and the enabling legislation which governs the mandate process.

I would also hope to similarly improve upon the county financial distress process which the commission also adjudicates. The goal in all instances is to consider risk analysis and cost benefit analysis in creating a workable system for both the state and the governmental entities affected by state mandates.

If you have any questions, please do not hesitate to contact me. There have been no changes to my Form 700 since the 2005 form in your possession.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Steven Worthley".
J. Steven Worthley

MAY 31 2006

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